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U.S. PATENT AND TRADEMARK OFFICE
TRADEMARK-PUBLIC ADVISORY COMMITTEE MEETING

February 10, 2003

[1:30 p.m.]

U.S. PATENT AND TRADEMARK OFFICE
Crystal Park 2
2121 Crystal Drive
Patent Theatre, Second Floor
Arlington, Virginia 22202

PARTICIPANTS

1 Trademark Public Advisory Committee Members

2 Mr. Miles Alexander, Chairman

3 Ms. Siegrun D. Kane

4 Mr. Kimbley L. Muller

5 Mr. David Moyer

6 Mr. Joseph F. Nicholson

7 Mr. Griffith B. Price, Jr.

8 Mr. Jon Sandelin

9 Mr. David C. Stimson

10

11 Union Members

12 Ms. Catherine Faint

13 Mr. Lawrence J. Oresky

14 Ms. Ollie Person

15

16 U.S. Patent and Trademark Office

17 Mr. Jon W. Dudas, Deputy Under Secretary and Deputy

18 Director

19 Ms. Anne H. Chasser, Commissioner for Trademarks

20

P R O C E E D I N G S

MR. ALEXANDER: The Trademark Public Advisory Committee had a morning session that dealt with confidential information. This is the afternoon session that is open to the public. We dealt with Madrid Protocol matters this morning, solely Madrid Protocol matters that are not yet public information.

We'll start our afternoon session which we hope to end by 4 o'clock not the 4:30 indication on the program. And I'd like to have you welcome our distinguished representative of the Under Secretary -- actually, the Director of Intellectual Property is Deputy Under Secretary for Intellectual Property, Mr. Jon Dudas, with welcoming remarks. Jon.

Would everybody identify themselves for the court reporter.

MR. DUDAS: Jon Dudas, Deputy Under Secretary for Intellectual Property and the Deputy Director of the United States Patent and Trademark Office. The longest title in U.S. government. I want to welcome

1 everyone, the Committee, Miles. Thank you very much.

2 I welcome the public. I want to say hello and welcome
3 to Jon Sandelin who is a new member of T-PAC.

4 I want to open just by recognizing something
5 I saw in the Sunday newspaper. Just another example of
6 the good work that Trademarks is doing, the teleworking
7 success, the electronic working through hoteling, et
8 cetera.

9 There was an article in the Sunday newspaper
10 talking about how Trademarks is leading the Department
11 of Commerce to move into the electronic environment.
12 And we're saving a lot of money and becoming more
13 efficient.

14 The Trademark operation is responsible for
15 the two earliest and in some ways most important
16 elements in the Strategic Plan of the goals of this
17 Administration and in this Congress, and that is to
18 achieve electronic processing by the end of this fiscal
19 year and implement Madrid Protocol. And particularly
20 significant in the light of the fact that the successes

1 pretty much have in the past with the teleworking, on
2 hoteling, are the successes they've already had in
3 electronic processing.

4 And I want to turn just a little bit to talk
5 about the revised Strategic Plan that has come out in
6 the President's fiscal '04 budget. The T-PAC and many
7 others had a lot of input into what we're trying to do
8 in the Strategic Plan. There was a requirement that
9 Congress placed on the Patent and Trademark Office to
10 revise a particular set of the Strategic Plan.

11 In working with T-PAC and members of the
12 private sector and patent organizations as well, we've
13 come up with what we think is really a collaborative
14 document with what the users want, what the government
15 wants, what the Administration, Congress, and everyone
16 involved wants. Essentially, you come down to a point
17 where there are no large-scale subjective issues
18 remaining.

19 One issue that's being raised by a number of
20 people in the private sector is an issue that has been

1 proposed to the T-PAC as well, and that is the issue of
2 monies going to the United States Patent and Trademark
3 Fees so-called "diversion."

4 In this revised Strategic Plan, part of the
5 President's budget, there has been a dramatic decrease
6 in the amount of monies that are coming to the Patent
7 and Trademark Office (inaudible). It's a 50 percent
8 reduction from the year before.

9 In addition to that, this administration,
10 through the Secretary of Commerce, has made an effort
11 to promote innovation and to promote economic growth as
12 talked about. This is the initial first step to
13 eliminate fee diversion ultimately.

14 That's a very significant event. In the last
15 12 years, this is the first statement that I'm aware of
16 ever where an administration has acknowledged and
17 recognized the issue of fee diversion and is actually
18 going to be taking positive steps to work to eliminate
19 it.

20 Included in the revised Strategic Plan budget

1 is a fee increase of nearly \$201 million. Notably,
2 among trademark filers, we expect that the trademark
3 filings will be \$765,000 less this fiscal year in part
4 going on some of the efficiencies of scale. We have
5 our electronic processing, et cetera; and you are aware
6 already of the fee scale and the fee scale that's being
7 proposed.

8 I'll go over a little bit about the state of
9 the Office as far as the budget. I know you've heard
10 many times from us in the Patent and Trademark Office
11 status quo is not what you see today in the office.
12 The status quo, at least in the office, generally is a
13 declining office. It is an office where certainly
14 patent pendency is going up. Certainly now in the
15 Trademarks area, there's been more success as far as
16 dealing with pendency, et cetera. But what you have
17 right now is the need for the Strategic Plan. We have
18 the need for the fee bill. And I'll talk a little bit
19 about what our budget is.

20 You all are probably aware that we are still

1 in the middle of and several months into '03 and we are
2 operating on a continuing resolution which is '02. And
3 the Administration has just released the plan for '04.

4 I used to live in Chicago. People would say,
5 if you don't like the weather, just stick around for a
6 month. (Inaudible.) Here in Washington, if we don't
7 like the way it looks, just stick around.

8 We've had a good amount of success over the
9 last year in turning the heads and turning the hearts
10 of the people who are looking at our budget. The
11 Senate introduced a bill and has passed a bill in which
12 the intention and goal was to fund the office more than
13 it has been funded in the past. The marker bill that
14 was introduced in the House actually would fully fund
15 still from all our user fees plus an additional amount.

16 What we're working on right now is trying to
17 make sure that as we round out '03 that the Patent and
18 Trademark Office gets as much of the money as possible
19 to try to comply with the revised Strategic Plan.

20 The commitment in '04 from the Administration

1 is substantial. In a time when many agencies are
2 receiving very modest increases, the budget for the
3 Patent and Trademark Office is scheduled for a 5
4 percent increase; and that's on top of an 18 percent
5 increase in fiscal year '03 for a total of well over a
6 20 percent increase. By now we're operating on an '03
7 budget, so that will be over a 20 percent increase.

8 And in that, as I mentioned before, part of
9 that commitment to the Patent and Trademark Office is a
10 commitment to work (inaudible) and eliminate diversion.

11 If there are any questions or comments for me, I'd be
12 happy to take them.

13 MR. ALEXANDER: David.

14 MR. STIMSON: Is there a schedule for phasing
15 out the diversion? In other words, the commitment that
16 you have from the Administration, is there any time
17 line for that; or is it more general?

18 MR. DUDAS: There is no specific schedule or
19 time line. And it's almost by definition because it's,
20 as you know, subject between the Administration and

1 Congress working out any budget. And, really, the only
2 thing that anyone can ever count on in Washington is
3 that year's budget. Actions speak louder than words.

4 So that's why I think what's most significant
5 is the commitment this Administration made this year in
6 cutting diversion in half (inaudible) and the
7 Administration's plan to eliminate it. But I think, as
8 you see '03 close out and they work on the '04 budget,
9 that, from a practical standpoint, is starting to take
10 shape.

11 MR. ALEXANDER: Any other questions? Thank
12 you very much.

13 MR. DUDAS: Thank you very much.

14 MR. ALEXANDER: Thank you for joining us.

15 Next on our agenda is our distinguished
16 leader, Anne Chasser.

17 MS. CHASSER: Thank you, Miles. The
18 Trademark operation is in the midst of a number of
19 significant changes that are absolutely apparent to
20 everybody that works within our operation. A year from

1 now, there will be no doubt of the significant changes
2 that we have accomplished. We're making progress every
3 day towards redesign of our operations that will allow
4 us to manage in an electronic environment, to improve
5 performance, and also to accept the filings under
6 Madrid Protocol.

7 The most apparent changes underway right now
8 is that we are in the process of consolidating a number
9 of law offices from 16 to 12 which requires moving
10 employees who are located in the North Tower Building
11 to the South Tower Building. Nearly, every employee
12 will be affected by this move which will be
13 accomplished by mid-March.

14 At that time, all of the examining attorneys
15 participating in the Work-at-Home Program, which Jon
16 talked about briefly, will be covered by the terms of a
17 hoteling concept agreement which significantly reduces
18 the amount of time examiners will need to come into the
19 office.

20 Now, the consideration of the consolidation

1 of our operations will allow us to save close to \$1.5
2 million a year in reduced office costs.

3 MR. NICHOLSON: Anne, may I interject a
4 question?

5 MR. ALEXANDER: Go ahead.

6 MR. NICHOLSON: What percentage of the
7 overall total examining corps is involved in the
8 Work-at-Home Program

9 MS. CHASSER: Right now, we have 110
10 attorneys who are working at home. And our examining
11 corps is roughly 250 at the full-time equivalent. We
12 have about 255 on board, but there's some part-time and
13 so forth.

14 MR. NICHOLSON: Is any examining attorney
15 eligible for this program?

16 MS. CHASSER: It's based on an agreement that
17 we have (inaudible). It is our hope to expand the
18 Work-at-Home Program as more resources become
19 available. We don't have the resources allocated in
20 this fiscal year. And if we're able to save in some

1 other areas, we may try to expand it.

2 MR. ALEXANDER: Anne, did you say 110 out of
3 250 are work-at-home?

4 MS. CHASSER: Yes.

5 MR. ALEXANDER: And how many of those 110 are
6 in full-time positions?

7 MS. CHASSER: Well, in order to work at home,
8 you have to be full-time.

9 As I mentioned before, our most ambitious
10 project by far which involves employees from every
11 organization in Trademarks is the preparation for the
12 implementation for Madrid Protocol and the delivery of
13 our Trademark Information System.

14 We have Ron Sussman, who is a former law
15 office manager, who is now our project coordinator for
16 this project. And his task is to coordinate all the
17 work of the individual teams -- we have many teams
18 established -- as well as managing the coordination of
19 all the process changes that will need to occur as we
20 prepare for the complete redesign of Trademark

1 Operations and transition into a fully electronic
2 process.

3 And as Lynne mentioned earlier this morning,
4 Madrid Protocol implementation will occur on November
5 2, 2003. And it is our plan to implement our Trademark
6 Information System (TIS) concurrently with the Madrid
7 implementation. You'll see the implementation of that
8 is only 270 days away, so we are very focused on the
9 major projects of Madrid and TIS.

10 We've also made a number of changes on how we
11 will measure and evaluate examination quality to
12 respond to quality improvement problems in our
13 Strategic Plan. Now, in the August meeting of the
14 T-PAC, Lynne Beresford will give the T-PAC some of the
15 in-process review improvements.

16 Brian Weber, who will be speaking to the
17 T-PAC a little later in the agenda, is working with the
18 members of the Office of Trademark Quality Review to
19 establish new criteria for assessing the high standards
20 of the examination quality. Brian, in his

1 presentation, will discuss plans for revising the
2 quality review process to include criteria for
3 assessing what is an excellent first action.

4 In addition, we have increased the staffing
5 in the Office of Quality Review, which currently had
6 six former examining attorneys, by drawing on the
7 expertise of three former law office managers who will
8 support our quality initiatives.

9 We recently created a problem resolution
10 process for further improvement of customer
11 satisfaction. Internally, our Trademark Assistance
12 Center has adopted a root-cause methodology to record,
13 identify, track, and gather problems in order to
14 identify the source of customer complaints, to resolve
15 problems, and to prevent recurrence.

16 To ensure that all problems are identified
17 and properly addressed internally, a new mailbox,
18 called the "TM Customer Problems," will be available
19 beginning today. And we will pilot this internally
20 with our employees so that they can forward any kinds

1 of descriptions of problems that they may encounter.

2 We'll then have a set of problem resolution performance
3 targets where we will respond within three days.

4 So if all goes well internally, then we plan
5 to launch that for our external customers as well. So
6 we'll keep you apprised how that effort is going.

7 In addition to electronic examination, we're
8 also in the process of transitioning all of our
9 examining attorneys into an e-commerce work
10 environment. By April we'll begin to deploy an
11 electronic First Action System for Trademarks known as
12 FAST. And that's the first step towards office actions
13 in a completely electronic environment.

14 First action pendency will continue to
15 increase over the next few months as examiners are
16 trained and spend time becoming familiar with these
17 procedures and tools. The initial response, however,
18 by those who have used the FAST has been overwhelmingly
19 positive. And we are very much looking forward to the
20 deployment of that.

1 At the beginning of the fiscal year, pending
2 cases handled by former lawyers were distributed to the
3 remaining examining attorneys. The redistribution has
4 had a temporary effect on reducing the numbers of first
5 actions completed by examining attorneys because they
6 were handling amended dockets and the dockets of other
7 attorneys. The situation will be substantially
8 diminished in the next two months when the response
9 cycle is complete for first office actions taken six
10 months ago.

11 The waiting response docket dropped 50
12 percent last year and continues to decline as a result
13 of the few first actions and more office disposals. So
14 examiners are currently taking actions on responses
15 that were received five months ago.

16 As we mentioned to the Advisory Committee at
17 one of our previous meetings, we have reinstituted our
18 production incentive award for examining attorneys.
19 And that has just been within the last two, three
20 weeks. As you may recall, we were forced to suspend

1 the award last year because of the excess capacity of
2 our examining staff which exceeded the amount of work
3 coming through the front door. So the level of new
4 filings appear to be consistent with our projections
5 for this year so far.

6 Under the award program, attorneys are
7 eligible for a performance bonus of up to \$10,000 every
8 six months for substantially increased production. The
9 incentive award has proven to be successful in
10 increasing production especially on the number of first
11 actions that are taken.

12 Examiner's production in the first two weeks
13 of our reinstated production incentive program
14 increased by 22 percent over the previous two weeks.
15 So we believe that the production incentive award will
16 help us to reduce first action pendency in the office.

17 The office, of course, will very closely monitor this
18 and the productivity in order to determine what we'll
19 do the second half of the year.

20 As I mentioned earlier, we believe the

1 pendency will continue to increase before it falls in
2 the second half of the year as the size of the amended
3 dockets continue to drop and examiners devote more time
4 to examining new applications. We expect to meet the
5 Agency's goal of three months pendency to first action
6 by September 2003.

7 Now, I'd just like to go over some highlights
8 of office statistics for the end of the first quarter
9 performance and filings.

10 Fifty-two percent of our initial applications
11 for the registrations of a mark were filed
12 electronically through our Trademark Electronic
13 Application System (TEAS) system in the first quarter.

14 Between 4,000 and 5,000 filings were filed through
15 TAES on a weekly basis including applications and
16 documents that were available electronically.

17 Applications for registrations of a trademark increased
18 by 8.8 percent in the first quarter compared to the
19 same period a year ago. We received 52,208
20 applications containing 63,849 classes that were filed

1 from October through December.

2 Now, should filings continue at the same rate
3 for the entire year, we will receive slightly less than
4 our planned estimate of 265,000 classes.

5 Average pendency to mailing first action as
6 of December 31 was 5.1 months. First action pendency
7 continues to rise again as fewer cases were examined --
8 as fewer cases were examined than were filed each month
9 in the first quarter. We expect that first action
10 pendency, again, will rise before it declines in the
11 second half of the year. But, again, I want to repeat
12 that we believe that we will be achieving the Agency's
13 goal of three month pendency to first action by the end
14 of the fiscal year.

15 And the average pendency to registration
16 abandonment or issued as allowances was 20 months, 20.3
17 months, in December. And our goal for the fiscal year
18 for full disposal is 15.5 months. And, again, we
19 believe that we will achieve that by September 30.

20 I want to talk very briefly about examiner

1 production. 50,218 examiner first actions were taken.

2 Slightly less than the number taken in the same period
3 a year ago. The low number of first actions taken by
4 the examiners in the first quarter was somewhat offset
5 by the increase to second actions that examiners are
6 taking to complete actions on applications already
7 under examination. Again, that's due to the
8 redistribution of the docket.

9 51,364 examiner disposals on initial
10 examination were taken in the first quarter which is an
11 increase of 7 percent from the number taken from the
12 same period a year ago.

13 At the end of December, we had 255 examining
14 attorneys on board. We currently have 253 at this
15 time.

16 The office continues to record high numbers
17 of disposals as a result of the priority we placed a
18 year ago on reducing the inventory of pending
19 applications already under examination.

20 Marks published for opposition were up 17

1 percent from the number published the first quarter in
2 2002. 56,910 marks were published for opposition,
3 including 78,722 classes.

4 The number of marks registered increased by
5 45 percent compared to a year ago. And you may recall
6 from the end of last fiscal year we registered 30
7 percent more marks than the previous year. So what
8 we're seeing now is the result of the bubble, the back
9 end of the bubble.

10 So that concludes my report from Trademark
11 Operations. I'd be happy to answer any questions you
12 may have.

13 MR. ALEXANDER: Any questions from members of
14 the group? David.

15 MR. STIMSON: Maybe I misunderstood the
16 statistic, but did you say the examiner first actions
17 were down -- I think it was the 50,000 figure --
18 slightly from a year ago?

19 MS. CHASSER: Right.

20 MR. STIMSON: My understanding is that's with

1 quite a few less examiners.

2 MS. CHASSER: Last year -- I think what we
3 need to do is really compare the whole year. Last
4 year, the beginning of the last quarter, we were
5 beginning to put people out, some of the examiners out,
6 on details. We had a production holiday for a period
7 of two weeks, I believe it was. So what we'll need to
8 do is really track it throughout the whole year. But,
9 you know, this is where we were at the end of this
10 quarter.

11 MR. STIMSON: So that doesn't necessarily
12 indicate a huge increase in first action per examiner.

13 MS. CHASSER: No, un-huh.

14 MR. PRICE: Anne, I think you said that
15 applications were up 8.8 percent for the first quarter
16 --

17 MS. CHASSER: Right.

18 MR. PRICE: -- of this fiscal year. If
19 applications continued to increase at the same rate,
20 there will be slightly less than the 265,000 total that

1 was estimated for the year.

2 MS. CHASSER: Right.

3 MR. PRICE: My question is the 8.8 percent
4 then represents not quite as much an increase as had
5 been projected.

6 MS. CHASSER: We are projecting for the year
7 a 6 percent increase in applications over last year.
8 And so we are expecting to receive 265,000 new classes
9 in this fiscal year.

10 MR. ALEXANDER: A quick question. Joe.

11 MR. NICHOLSON: I have a quick question. A
12 quick update on the move to Carlyle. Are they still on
13 track with the time line?

14 MS. CHASSER: Yes. As a matter of fact, I
15 wanted to introduce Jo-Anne Barnard who is our new CFO.

16 Jo-Anne, would you like to stand up? The reason I
17 wanted to introduce Jo-Anne at this point is that
18 Jo-Anne, before becoming our CFO -- and today is
19 actually her first official day -- was in charge of the
20 whole move process, the negotiation of the lease in the

1 Carlyle. So I'll let her actually address that.

2 MS. BARNARD: The first two buildings are
3 under construction now. They're scheduled for delivery
4 in December of this year. Our best estimate at this
5 time -- and that is an estimate because we don't know
6 how the weather is going to affect us -- is that the
7 first two buildings will be delivered sometime around
8 the third week of October. And we're trying to
9 finalize that right now with General Services
10 Administration in terms of how we're going to manage
11 our exodus from Crystal City.

12 The tenants of the first two buildings are
13 all patent examining groups. Trademarks does not move
14 until the maiden building is delivered which is the
15 Madison Building. And that won't be delivered until
16 about May of next year.

17 And there are some issues right now even
18 related to that which we'll update you on as we find
19 out from the city as to whether we will be able to
20 occupy just half of the Madison building until the

1 atrium is complete. But the main building is two major
2 wings connected by about a 12-story atrium. And how
3 they're going to deliver that atrium is going to affect
4 the occupancy permit.

5 And we're in the process right now of
6 negotiating with all three unions on the impacts of the
7 move. And that's going quite well.

8 MR. ALEXANDER: Thank you very much.

9 MS. BARNARD: Thank you.

10 MR. ALEXANDER: Any other questions? If not,
11 we'll move on to the next agenda item. Sandy, will you
12 come on up?

13 She's going to be discussing the 2004
14 President's USPTO Budget. There's a section in your
15 book that will parallel the slides.

16 MS. WEISMAN: I am here to talk to you
17 predominantly about the '04 budget. But I think it
18 would help to know where we are in '03. Usually by
19 this time, we have an appropriation and we know where
20 we are. And it's anybody's guessing game.

1 Right now we're under about our 10th
2 continuing resolution. On February 5th, Congress
3 passed another temporary measure to fund us through
4 February 20.

5 Right now the only organization that has put
6 out any what they call marks, which is the funding
7 under those, is the Senate. They passed an omnibus
8 bill several weeks ago, and they met the president's
9 targets for funding the federal government agencies.
10 So that has been part of the controversy in that the
11 Senate originally when they gave us marks last year
12 that exceeded the president's goals. And he basically
13 told them he would veto anything that didn't fit the
14 \$890 billion.

15 So they passed the omnibus bill, and I'll
16 talk a little bit about the impact of that on us.

17 The House worked all weekend. Supposedly
18 today, they're having public meetings. If they can
19 pass a bill, if it's the same thing as the Senate, then
20 it pretty much will go to the full floor and be voted

1 on. If they have different amounts for agencies, it
2 will go to what's known as a conference between the two
3 organizations; and then they'll hash it out.

4 Hopefully, then they'll pass funding bills for us.

5 The Administration has pretty much --
6 probably one of the longest times the government has
7 functioned under a continuing resolution. Under Reagan
8 we were under one for seven months. But this is pretty
9 close to that.

10 But anyway, they've advised the Hill that the
11 '04 budget is important to them. And that if they
12 can't pass appropriations for the federal agencies by
13 the holiday week next week when the Hill retires for
14 the week, then they want them to pass a continuing
15 resolution for us for the remainder of the year. In
16 some respects for PTO, that can be good and bad news.

17 We've received a number of different marks
18 and we've had different meetings with this group.
19 We've told you what the status was. As you can see on
20 the far left column, that's the appropriation that we

1 got in 2002 of 1,127 billion. Right now that is the
2 funding level we're functioning under. However, we
3 only get that amount of money for X number of days that
4 we're under a CR. So we don't just get to spend at
5 that level.

6 The president's budget, the one that is
7 currently being debated for '03, is the 1.334 billion
8 level. The House made a proposal. It's not a mark.
9 Congressman Wolf, to try to generate some activity on
10 committees, he put out a bill. For us he recommended
11 1.256 billion.

12 I will tell you in that 1.256 billion,
13 because we did not generate enough fees to cover that
14 in 2002, there is approximately \$50 million of
15 appropriated funds for the USPTO. That is highly
16 unusual. That hasn't happened probably since 1992 when
17 we had surcharges and other kind of things basically
18 defunded.

19 If we are under a CR for the entire year,
20 there is a formula that we use and it gives us a teeny

1 bit of inflation. And as you can see, it gives us a
2 whopping \$3 million more than our 2002 appropriations.

3 So if we have to function basically under the 2002
4 level, that's the amount of extra dollars that we get.

5 And, of course, everybody has heard about the
6 Senate mark. There was a mark out there. I believe
7 that there was a great desire to try to help USPTO get
8 at some of the prior fees that had not been
9 appropriated to us. However, because of the scoring
10 issues and all these things that we talked to you
11 about, it's difficult doing it.

12 The language in the Senate appropriation bill
13 in essence took \$120 million from the USPTO. And the
14 only way to get it was to take it off of current fee
15 income. Plus, we also took the across-the-board
16 reductions that all other agencies did.

17 So as you can see, the Senate mark right now
18 is 1.054 billion. That's \$73 million less than we
19 functioned with in 2002. We hope that, if and when we
20 go to conference, that will get wiped out and we that

1 may get some more funding than that. But at this
2 point, we don't know.

3 The truth of the matter is, if we have to
4 function at a continuing resolution for the entire
5 year, it gives us no additional money which means we'd
6 have to absorb the 4.1 percent pay rise that has been
7 approved for government employees or will be approved
8 for them. And for us that's about \$40 to \$45 million
9 dollars.

10 It also doesn't give us any normal inflation
11 we get. And for us, again, that's about \$9 million.
12 It also had no funding for Madrid Protocol. So we have
13 to somehow find that funding within our -- and we have
14 found it within our 2002 and that's what we're
15 functioning on right not. And that's about \$7 million.

16 And, basically, in anticipation of these
17 pretty low marks, we've pretty much cut all
18 discretionary funds -- Travel, training, equipment
19 purchases, not back-filling any attritions, cutting
20 contracts -- because we have to eat those amounts of

1 money if we don't get something better than our 2003.

2 So at this point, it's pretty much a guessing
3 game. Or, hopefully, they'll pass something this week.

4 And it will be good news for us. And we won't have to
5 -- maybe we will be able to restore some of our
6 funding. But at this point, we don't know.

7 With regard to 2004, 2004 is a very good year
8 from the Administration's standpoint. The President
9 recommended 1,404 billion for the U.S. Patent and
10 Trademark Office. That is based on a fee bill passing
11 in '03, and/or passing by October 1 of '03, to be ready
12 for '04 which will generate about 1.5 billion in fees.

13 Believe it or not, the 1,404 billion assumes
14 we will get all of our fee income. But there is a
15 small amount of diverted funds of approximately 99
16 million. And that 99 million comes from our current
17 fee income.

18 In the appropriation law in Congress, they
19 can't divert money from something that hasn't yet been
20 passed. So the only way to get diverted amounts is to

1 take it from current fees. And in 2004 -- and I'll
2 show you on another slide -- we will generate about
3 1,302 billion in fee income and that 99 million comes
4 off of there.

5 But in '02, we actually spent about 1,144
6 billion. The reason it's more than our appropriation
7 is because we do get reimbursements and other kinds of
8 receivables that we collect. And that gives us a
9 little bit more money to spend.

10 The President's budget that is currently on
11 the Hill, as you can see, is 1.334. And the
12 President's budget for '04 is the 1,404 billion.

13 Now, clearly, if we don't get anywhere near
14 the President's budget in '03, it will be interesting
15 as to whether you have to have a revised budget for '04
16 because the difference in the amount of money may be
17 more significant than the Administration wants to
18 project. But for now, this is where we are.

19 In our initiatives, we funded almost all of
20 the Strategic Plan initiatives. We've made some

1 adjustments to the timing of those. We've moved some
2 of them around. And in doing so, we've been able to
3 stretch out the costs for the new initiatives in '04.

4 As I believe Clarence had already mentioned
5 at previous meetings, '04 is a particularly difficult
6 funding year for the PTO because that is the first year
7 we're moving to the new Carlyle building. And we will
8 have some fairly substantive costs to fund that,
9 including the move. And those kinds of things, as well
10 as dual rent and those kinds of other expenses and dual
11 operations, are things that we'll need to make.

12 So the issue of how much money we get in '04
13 will determine how much money can go to the initiatives
14 because our first priority would have to be to the
15 Carlyle move and the people on board and then go from
16 there.

17 This is just kind of a little summary of fee
18 collections and budget requirements. For '04 I want to
19 point something out in '02 because I know that your
20 attention will be drawn to it right away.

1 As you will see in the out years in '04,
2 there is a slight diversion of the \$99 million. And
3 you can see the display of the fee split. In the '04
4 budget, it assumes the fee bill passage. In the '03
5 President's budget, that assumes those surcharges that
6 are in the budget but were pretty much dead on arrival
7 when the budget went to the Hill. So it's a little
8 hard to compare apples to apples between the '03 budget
9 and '04 budget.

10 I also gave you just a couple of other
11 estimates of fee income if we do or don't pass the fee
12 bill in '03. Right now there are no new fees except
13 our CPI, consumer price index, increase. And as you'll
14 see, we'll generate about 1.2 billion in fiscal year
15 '03. And some of those numbers that I showed you are
16 for funding that exceed those amounts of money that the
17 House proposal did.

18 If the fee bill were to pass in '03 and it
19 was effective April 1, we estimate that we'd take in
20 about another \$56 million.

1 Now, depending on how our appropriation
2 language is written for '03, it may or may not give us
3 access to those funds. If there's not specific
4 language in there, the only way we can get those
5 increased funds would be to get a supplemental
6 appropriation. Those are very difficult to get. And
7 with the issues of the war and all those other things
8 out there, it is highly likely we would never get
9 access to that additional income.

10 But we are working with the Hill now to get
11 some language in our '03 appropriation, should we get
12 one, that would allow us to get some or all of a
13 portion of those fees.

14 One thing I wanted to point out to you about
15 '02 is that you'll notice that in '02 that the patent
16 fee collections were less than how much Patents
17 actually spent. On the other hand, Trademark's fee
18 collections were more than Trademark spent. That is
19 not an issue of Trademarks supplementing Patents.

20 In comparing the budget requirements to the

1 fee income, as you may or may not recall, we did get
2 carry over in 2002. Of our total fee income of 1,150,
3 we were only allowed to spend 845 million of it. The
4 remainder of the money that covered our appropriation
5 was \$282 million from prior-year funds. So because we
6 get prior-year funds, we're able to offset and adjust
7 in order to cover the requirements without having one
8 group of fee supplement the other.

9 So though it gives the appearance that that
10 might be the case, it is not. Trademark fees did not
11 supplement them. The truth in the matter, the
12 difference is what would have been undistributed and
13 unavailable for the Patent office. And could we get it
14 in future years, it would become available to us in
15 future years.

16 The other thing to kind of note is in the
17 President's budget it generates significantly less fee
18 income than '03. Part of the reason is Trademark's
19 requirements are going down because of their move to
20 automation. And part of what is driving that is the

1 three-year track that they are proposing to generate
 2 different levels of fee income, more for paper filers,
 3 less for paper application filers but who want to do
 4 business basically in paper.

5 And then those who want to do everything
 6 electronically, and because of that three-track system,
 7 it is does radically affect the fees. In fact, I think
 8 it's about 700,000 less in '04 than we had originally
 9 projected under the fee bill back in June of last year.

10 MR. STIMSON: Sandy, excuse me.

11 MS. WEISMAN: Yes.

12 MR. STIMSON: Would you prefer if we hold
 13 questions to the end?

14 MS. WEISMAN: Oh, no.

15 MR. STIMSON: I have a question on the slide
 16 before.

17 MS. WEISMAN: All right.

18 MR. STIMSON: The category is Total Fee
 19 Collections and Total Requirements.

20 MS. WEISMAN: Yeah, it's not going back.

1 MR. STIMSON: Is total requirements really
2 accurate, or is that total availability?

3 MR. ANDERSON: No. The total requirements is
4 our budget request.

5 MR. STIMSON: But is that arrived at by
6 taking the total fee collections and deducting the one
7 case \$99 million for diversions? And so you say, okay,
8 to that. That's what we're going to have available to
9 us; and, therefore, that's what we're going to base our
10 budget on. Or is it real income?

11 I'm guess what I'm asking is: Is it a
12 top-down budget where you look at what you're going to
13 get after they've taken the diversion? You say, okay;
14 that's what we've got for our requirements. Or is it a
15 bottom up where you say here's the money that we need
16 to do what we need to do?

17 MS. WEISMAN: David, it's kind of a back and
18 forth. We actually originally in '04 proposed a budget
19 of 1.692. And then in the negotiations and discussions
20 with intellectual property organizations, they pretty

1 much said that they would be willing to fund a fee
2 increase of about 1.5 billion.

3 So when we submitted our budget to OMB, our
4 request at the time we submitted it was 1,692. Within
5 a month, we knew it was going to be 1.5 billion. We
6 told OMB that the highest amount of fees we would
7 generate was 1.5 billion.

8 What they did is they came back and said
9 we'll give you -- they actually gave us less than
10 1,404. We appealed some of this, and they gave us \$100
11 million more. They came back and gave us an amount.
12 And then we went through all of our initiatives and
13 prioritized them and funded them based on the amount of
14 money they were (inaudible).

15 MR. STIMSON: So it is based on what you know
16 you have available?

17 MS. WEISMAN: Right.

18 MR. STIMSON: So if there would have been no
19 diversion, your requirements would have been higher and
20 you wouldn't have been able to pay for them.

41

1 MS. WEISMAN: Right.

2 MR. STIMSON: Thank you.

3 MR. PRICE: Going back to the slide that's
4 captioned FY 2003 Funding Scenarios.

5 MS. WEISMAN: Unfortunately, I can't get back
6 there.

7 MR. PRICE: If the Office continues to
8 operate under a continuing resolution for all of fiscal
9 year '03, what would be, in fact, the effect on the
10 Strategic Plan and in particular with respect to the
11 Strategic Plan on (inaudible).

12 MS. WEISMAN: We sort of knew that we were
13 going to have difficulties with '03 based on the
14 Congress change. And so Mr. Rogan was very clear that,
15 before Madrid got passed, he wanted e-government to go
16 in some form and he wanted the quality initiatives to
17 go in some forms. We kind of knew what the Senate mark
18 was which was less than our request. And we literally
19 prioritized the initiatives, which ones we needed to
20 fund. We came up with those dollars. And then we went

1 looking for reductions in other areas.

2 So one of the things that we reduced was
3 overtime. We reduced some organizations and didn't
4 replace attrition. The cuts that I told you about, we
5 made those cuts in order to fund some of the Strategic
6 Plan initiatives.

7 However, the difficulty is, when you're under
8 a continuing resolution, you're not allowed to start
9 new initiatives. E-government doesn't fall under that
10 because we've been doing Trademarks for a long time,
11 and we have been doing Patents at least for a year or
12 so. Those are in-process and moving along.

13 The quality initiatives are basically not
14 started because we have not allocated money to them.
15 As far as any other initiatives in the Strategic Plan,
16 none of them will likely happen because, if we have to
17 function under a CR, there's no money to do it and it's
18 not allowed.

19 With regard to the Madrid Protocol, again,
20 when that passed, we knew that we had a year to do it.

1 And the CIO and the Trademark organization estimated
2 the cost, the minimal cost, that they would need to get
3 it going. They identified about \$7 million.

4 And, again, we went back to everybody and
5 back to the different organizations and we identified
6 \$7 million more in reductions in order to fund them.
7 The only way to fund what we felt were unfund
8 priorities was to do it that way. But we did not fund
9 the majority of the Strategic Plan initiatives. Many
10 of the Patent ones are not funded like outsourcing.
11 There's no money for that.

12 Did that answer your question?

13 MR. ALEXANDER: When you say you cannot
14 create a new initiative, you got rid of overtime. Did
15 you go back to incentives because that was the existing
16 initiative?

17 MS. WEISMAN: In the case of the Trademark
18 organizations, we did fund their incentives and
19 overtime because that is keeping their pendency at a
20 good level and then meeting Strategic Plans that they

1 were so far that we felt that that was very important
2 to fund them. So though they were initially cut, those
3 cuts were restored early on and they have the funding
4 for it.

5 This next slide is just to kind of give you a
6 little bit of a picture of where the fee income is
7 going to come from in '04 from the fee bill. We are,
8 under the fee bill, going to generate approximately 201
9 million more dollars than we would normally take in.
10 And that is factored into that 1,504 billion amount
11 that we're going to take in. And of that amount,
12 Patents will generate approximately 90 percent of it;
13 and Trademarks, 10 percent. And it shows you, again,
14 the breakout of where it comes from.

15 Most of Trademark's come from their
16 processing charges, their application and processing
17 charges. And that's about 149 million. And then
18 another 5 million comes in from other services.

19 And now it's not going forward.

20 MR. ALEXANDER: You can just go to the next

1 one in the handouts.

2 MS. WEISMAN: No problem. The next one is
3 Key Workload Indicators. And, again, I'm just trying
4 to give you a quick overview of the kind of things that
5 make up the budget.

6 The first one is the number of examiners on
7 the Patent and Trademark side that will be on board
8 during the year. And for Trademarks, you see 250
9 examiners.

10 And as Anne mentioned, workload, again, their
11 workload is 265,000 new applications. And that's a 6
12 percent growth. And as Anne indicated, the volumes
13 have been coming in quite steadily. And both the
14 volumes and fees are pretty much on target for this
15 time of the year.

16 Production-wise the look is to register 111
17 trademarks, and pendency is three months and 15.5 for
18 first month office action.

19 The next slide is a little ambitious. There
20 are two slides here. One is just to try to give you a

1 feel for the impact of the Fee Modernization Act that
2 we proposed. The first one is what happens kind of
3 under the patent fees. As you will see, we showed you
4 what the current fees are for the large and small
5 entity and we showed you what the proposed fees are for
6 a large and small entity.

7 And then part of what the Fee Modernization
8 Act is intended to do, at least on the Patent side, is
9 to try to not have the smaller applications subsidizing
10 the cost of the larger ones. So as you can see, we're
11 going to move a large entity from a life-cycle cost of
12 about 8,440 to 9,700 for large. Small entity will go
13 from 4,370 to 5,200.

14 And a typical large entity that has more
15 claims and more paper would go to about 11,700. And
16 the bottom-line increase is about 1,260 for a large
17 entity, 880 for a small one, and 3,310 for a complex
18 one.

19 In the case of Trademarks, clearly, I know
20 that the comparison is not the same as it is for

1 Patents in the fact that Patents has multiple
2 maintenance fees. And then the Patents, after 20 years
3 we saw in the case for Trademarks, you can pay your
4 application for a one-time renewal several, I guess,
5 every 10 years for a number of years to keep the
6 registration.

7 We showed it one time as a life-cycle cost.
8 And as you can see, our current fees under the current
9 fee proposal is \$1,285 if all these activities happen
10 under the proposed legislation. And we did not take
11 the least expensive electronic version. We took the
12 version that we felt that the majority of applicants
13 would use which is an electronic paper application but
14 would still do some of their correspondence with paper.

15 And the comparison is that it's \$10 less. And paper
16 is \$40 dollars more.

17 And so that kind of gives you a little bit of
18 a view of the FY 2004 budget. The process has just
19 started. The President released his budget on February
20 3. The Hill has started to gear up to begin taking a

1 look at it. There's a lot of work going on with the
2 committees.

3 The Congressional Budget Office is doing
4 estimates of our fee income. Right now, we're giving
5 them information so that they can, as they build their
6 estimates of our fee income, and they don't just take
7 our word for it.

8 And, hopefully, this summer the process might
9 get back on track and they might actually pass marks
10 and they might actually pass bills shortly before
11 October 1 or shortly thereafter. And maybe we'll know
12 better what kind of funding we're going to have rather
13 than the current situation where we have no idea.

14 MR. ALEXANDER: Starting here with the
15 question based upon fee income, or a question about
16 what you think your needs are.

17 MS. WEISMAN: We start -- when we start the
18 process, Miles, we always put what we think our
19 requirements are. Clearly, in the negotiations in the
20 Administration, they have different views of how much

1 money we have. We go back and forth. There's an
2 agreement on amounts. And then we finalize our budget
3 based on that. And it reflects the Administration's
4 position.

5 MR. ALEXANDER: So you have your goals. And
6 as far as those goals, you have to limit those goals to
7 fee income.

8 MS. WEISMAN: No. In the case of this
9 Strategic Planning, we did not do that. We literally
10 did our five-year budget projection. And then we
11 looked at the fee income, and we went through quite a
12 number of reiterations in order to ensure that it
13 generated sufficient income to make all the year
14 requirements in the outyears.

15 So, no, we did not go through that process.
16 Even with the process, we might not ever get that. We
17 don't have the (inaudible).

18 MR. ALEXANDER: Any other questions? Thank
19 you very much.

20 MS. WEISMAN: Thank you.

1 MR. ALEXANDER: Lynne, if you've not worn
2 yourself out.

3 MS. BERESFORD: Thank you very much. I'm not
4 even going to sit because I'm only going to be here,
5 you'll be relieved to know, for a moment or two.

6 I've been talking at the last couple of
7 Public Advisory Committee meetings about our changes in
8 quality review and how we're looking at in-process
9 review and more current work. And we're trying to
10 focus our quality not just on decision-making but also
11 on the complete application and on the complete action
12 that's done by the examining attorney.

13 In an effort to provide customer service, we
14 want to look at what examiners are doing not only for
15 the decision-making but to make a determination that
16 they're expressing themselves clearly, that they're
17 putting adequate evidence into their letter, and, in
18 general, they're producing quality work for our public.

19 And today to talk about this in more detail I
20 want to introduce the new head of our Internal Quality

1 Review Unit and Training Unit, Brian Weber. And Brian
2 has been here at the USPTO for 11 years. He was an
3 examining attorney for five years. And then he was a
4 senior attorney, worked for a while in the
5 Commissioner's office as a petition's attorney. And he
6 has done a great deal of quality and training work
7 prior to coming to the Office of Internal Quality
8 Review.

9 He, in fact, developed the Office's total
10 program which is the program used for new examining
11 attorney training. And it's a very good program. I
12 use it as the basis for the Trademark Prosecution
13 course that I taught at Georgetown. So I am actually
14 quite familiar with this total training.

15 So having said that, let me have Brian come
16 up and talk about the new Office of Internal Quality
17 Review and what they're doing.

18 Thank you.

19 MR. ALEXANDER: Brian, welcome.

20 MR. WEBER: Actually, what I did was just put

1 together a few slides that I want to give you a little
2 bit of an introduction into some of the changes that
3 we've done over the past couple of months.

4 Anne actually started this afternoon by
5 mentioning a couple of the things that we've been doing
6 that relate to some of the accomplishments we have in
7 some of these (inaudible) and that is the size of the
8 group.

9 Prior to the time that I joined the group, we
10 had six people in the group. We've brought in, in
11 addition to me, three of our form managers and seniors
12 as part of all of the realignment and things coming up.

13 We had some people available. And one of the things
14 that we stress is that we wanted to bring in people
15 that were interested in doing this.

16 So we've inquired about doing the
17 realignment. We went to the examiners, the managers,
18 and to the seniors, found out who was interested in
19 quality and training efforts, an area we had worked
20 with them before; and we brought them in.

1 We were able to do the same thing recently --
2 and I'll talk more about this in a moment -- with some
3 of our support staff and supervisors. And, again, we
4 went to people up front who were interested in the
5 process and interested in what we were trying to
6 accomplish.

7 So as I start to get into some of the things
8 that we are doing, I just wanted you to have that kind
9 of mindset that the commitment to the quality effort
10 that we're putting together started with the people
11 that we brought into the group. And for me anyway,
12 that was a key part of what we were trying to do.

13 To sort of back up for a second, one of the
14 first things that I asked the group to do was to put
15 together an idea in their minds what their mission was.

16 This group has been around in some form or another for
17 a long time. And as we were in a sense reinventing
18 ourselves, we wanted to figure out what it was we were
19 trying to accomplish. And we built on some work that
20 had been done in a pilot program over the past few

1 months.

2 And this is what the group came up with. I
3 bring it to you for two reasons. And you'll see the
4 italicized portions -- that's what I really want to
5 focus on.

6 Lynne mentioned promoting excellence. One of
7 the things that this group has always done is measured
8 quality. They have given statistical reports on the
9 number of errors and things like that. But our
10 overriding goal now was to do those things, yes, but to
11 do them with an effort towards promoting excellence.
12 So that's what we're going to keep focusing on. And
13 I'm going to talk to you about how we're going to do
14 that.

15 The other thing I thought you might be
16 interested in, and this is someone in the group who
17 came up with this and I think it relates to this group
18 obviously -- increasing public confidence. The group
19 felt that this was a key part of what they wanted to
20 do. And since we see and hear the feedback from our

1 customers, and if what we're doing doesn't in some ways
2 relate to that, it sort of seems pointless.

3 We expect the quality. But we want to take
4 it in the context of what the customers want, what are
5 the things that you're looking for that make an
6 excellent product, try to figure out what if the things
7 we're doing are actually promoting excellence in those
8 particular areas.

9 To get into a little bit more specifically on
10 the type of review that we're doing and sort of the
11 purpose of it, in the past, this group basically looked
12 at decision-making. The quality review function was
13 statistical reporting of the numbers of clear errors on
14 substantive issues that affected registration. We
15 called it different things at different times. But
16 essentially that was the main function.

17 Last year there was some effort to get
18 involved in doing something with that to try to improve
19 quality but to a much lesser degree than that core
20 function of statistical reporting on the

1 decision-making. And we are still doing that. We will
2 still report data that will be very similar to that on
3 the substantive decision-making problems that exist.
4 We know that those are important efforts.

5 But what we found very often was that, beyond
6 the decision-making, the things that we were hearing
7 about that were problems were a little bit more
8 specific things. It was the handling of the issue.
9 The examining attorney might make the right decision,
10 but the handling of an issue might not be done right.
11 Or vice versa, it might have been done very well. And
12 so our new review is a level that hasn't been done
13 before in that it looks at the handling of every aspect
14 of every issue in the file.

15 In the past, we've looked at a file as a
16 whole thing. This was bad or this was okay. Now we're
17 looking at every issue, we're analyzing every issue,
18 and we're identifying for the examining attorney
19 whether or not each of those issues were handled in an
20 excellent manner or a deficient manner. So there's the

1 good and the bad. There's very specific detail. And
2 there's an explanation that we give them as to what it
3 was that made it excellent or what it was that made it
4 deficient.

5 MR. ALEXANDER: When you say "every issue,"
6 I'm not sure I understand. Being the heart of the
7 issue may be likelihood of confusion or descriptiveness
8 and the rest may be relatively routine. What do you
9 mean by "every issue"? Isn't the essence of the
10 substantive issue that the examiners are dealing with?

11 MR. WEBER: Yes. That's sort of the key
12 starting-off point. Likelihood of confusion,
13 decision-making, for example. But even within that
14 particular issue, we would deal with not only did they
15 give you the proper cite but did they explain their
16 reasoning. Did they tell you why they thought there
17 was a likelihood of confusion? And beyond that, did
18 they attach evidence that will at least make their
19 case?

20 So one of the things, a typical example, was

1 a file that we returned last week. There was a
2 likelihood-of-confusion issue. It was handled fine as
3 far as the decision-making process. It was the proper
4 decision we thought. But within that, we actually
5 returned it for being excellent and deficient on that
6 same issue. The writing was excellent. It was a very
7 good example of presenting why the examining attorney
8 thought the marks were similar and the goods were
9 related.

10 The evidence was deficient. The evidence was
11 not enough that we thought to even possibly make the
12 case that would support the refusal.

13 So even within an issue, we are breaking down
14 at that level to identify what things would make this
15 excellent, what things did make it excellent, or what
16 things were deficient.

17 MR. ALEXANDER: Did that include (inaudible).

18 MR. WEBER: In addition to the substantive
19 stuff, things like identification and classification
20 issues. Other issues might be substantive

1 decision-making, another area that we're taking a much
2 more detailed look at and in some cases little if at
3 all before.

4 MS. KANE: Could you give an example on that
5 particular case why the evidence was deficient? I can
6 imagine an examiner saying, All right. The goods are X
7 and the other group is Y and goods sold in the same
8 stores or that kind of thing.

9 Was that the type of thing that was missing?
10 Or are you expecting the examiners to go search the
11 Lexus and Nexus data bases and come up with evidence
12 from that area or both?

13 MR. WEBER: Good question. And the answer,
14 obviously, is a little bit that it depends. Evidence
15 has been a key thing for us. And I think one of the
16 fears that some folks have had is that we're going to
17 be demanding a lot of evidence, sort of always asking
18 for more.

19 And I have to say in the things that I've
20 looked at so far that it's been extremely rare. It's

1 been more a matter of was this evidence the kind that
2 was readily available and it really would prove your
3 case. Not that you would always have to (inaudible) at
4 the board or anything of that sort, but that it will be
5 convincing enough to at least present your case. So we
6 are more often giving that kind of guidance.

7 Just to give you a specific example in this
8 case, the issue of relatedness of goods was paint and
9 some sort of a coating, a lacquer-type finish or
10 something like that. And all the examining attorney
11 had put in was what a basic definition of what paint
12 was. And I think in the definition it said something
13 about it was used to coat surfaces or something like
14 that. And that was the evidence tying those goods and
15 services together.

16 Well, there are dozens, if not hundreds, of
17 registrations on the register showing that people
18 produce both of those goods under the same mark. And
19 this was a final refusal. Only a definition of paint.
20 So we felt like in that case that definition of what

1 paint probably wasn't enough to prove the case that we
2 had related goods and services.

3 MS. KANE: Number one, I think it's great
4 that you guys are doing this. Number two, aren't there
5 situations where really the definition is enough?

6 MR. WEBER: Absolutely.

7 MS. KANE: The consumers do not go and look
8 at the registrations that are in the Patent and
9 Trademark Office. And I don't think the likelihood-of-
10 confusion issue is based from the consumer reaction.
11 So isn't there an argument that in some cases goods by
12 themselves should be ordinary definitions of those
13 goods that that should be enough?

14 MR. WEBER: Yeah, absolutely. I think there
15 are some -- a lot of cases. I'm going to go through
16 some of the standards that we've developed. And one of
17 the things that you'll notice is that there is nothing
18 specific in terms of levels, amounts, types, or
19 anything like that that's expected in any case. It's a
20 case-by-case basis.

1 And, certainly, we've had some of those
2 where, one, the definition may have been all there was.

3 And, two, it may have been absolutely sufficient.
4 It's kind of hard to explain it out of context.

5 But in this case, it was a little odd to --
6 the coating word was only used as a definition. It
7 wasn't so clear that it was talking about -- that it
8 was a verb as to what the paint did which seemed a
9 little iffy. If you got that on a final refusal, I
10 would wonder whether or not it was enough.

11 But beyond the specifics, we probably, under
12 any of the circumstances that we've looked at so far,
13 have returned things sometimes as excellent when all
14 there was was a dictionary definition if it did the
15 job.

16 MR. ALEXANDER: Griff.

17 MR. PRICE: I think this is an excellent
18 initiative. And I think you and the Office should be
19 commended for undertaking it. I do have one question.

20 Do you anticipate, is there any way to

1 measure the impact, if there is one, of this kind of
2 program on the number of ex parte appeals that are
3 taken by the Board or the number which are litigated to
4 a Board decision?

5 MR. WEBER: With respect to that question, we
6 have -- I think the answer is yes. We haven't gotten
7 that far in much of our analysis at this point other
8 than to say that we are going to measure the results of
9 what we're doing. And certainly that will be one of
10 the ways we can do that.

11 And I will tell you that we have tried to
12 have an eye on that kind of a perspective, and
13 especially in the final office action (inaudible). At
14 the final stage, we try to have an idea of what would
15 this look like on appeal to the Board. And not only
16 take things that we're going to win, but we certainly
17 would want only to take the things where we had an
18 legitimate point and we had proven it.

19 MS. KANE: Are you doing something to look at
20 this in an earlier stage? I understand when you have a

1 final refusal. There it is, and you want to know what
2 the chances are and why (inaudible).

3 But in terms of saving people time,
4 applicants as well as the office, if you're going to
5 demand that kind of evidence, if you do it in the early
6 stage, that might cause a lot of people to say to their
7 clients, give it up, folks. It's just not going to
8 fly.

9 Is that a possible area?

10 MR. WEBER: As to whether or not it should be
11 in the first action?

12 MS. KANE: Yeah.

13 MR. WEBER: Yeah. In fact, that's one of the
14 things that, as we start doing this, we tried to
15 identify this as we have, you know, certain constraints
16 and expectations on the first action on the final. And
17 we've tried to be aware of the Office's constraints
18 time-wise but not to the point that we let that keep us
19 from trying to put out whatever we define as a quality
20 product.

1 MS. KANE: Let me just mention from the point
2 of view of the practitioner and the client that when
3 you get a first action and it says X. And so you tell
4 your client, based on this, you can expect you will be
5 able to overcome something. And then you get a final.

6 And suddenly, Oh, my God, they're throwing (inaudible)
7 registrations at us which we hadn't considered. And
8 your client is saying, well, you told me it was okay.

9 If you could do something to bring that out
10 at the beginning, that could be very useful.

11 MR. WEBER: And let me just mention one of
12 the things that relates to some of the things that
13 you're asking about. And that is the idea that this is
14 (inaudible) in-process. So whether it is a first
15 action or a final action, one of the things about
16 reviewing current work, recent work which is nothing
17 more than three months old, is, hopefully, there might
18 be actually a chance to fix it before it gets to
19 appeal, before it gets abandoned, and/or there was a
20 wrong decision made or a decision made that was

1 improper analysis was so poor that you really didn't
2 know what to take from it.

3 MR. ALEXANDER: Joe, do you have a question?

4 MR. NICHOLSON: How do you select which cases
5 to review? Is it just random?

6 MR. WEBER: We do a random poll. We are
7 reviewing 5,000 first and final actions so roughly
8 2,500 of each. We poll a couple times a month. We
9 will do -- not a specific poll by examining attorney,
10 but we will see that we do get a spread throughout the
11 examining corps. That's going to sort of factor into
12 the equation so we don't end up pulling from the same
13 examining attorney every week. It is roughly a spread
14 among the group.

15 I will leave the standards for you to look at
16 later at your leisure. But as I mentioned, I want you
17 to just sort of realize that these are achievable in
18 the case of the excellent standard. We only do this as
19 a sort of a bell-curve situation. We may not have a
20 huge number of files or issues that are handled in an

1 excellent manner at the outset. We don't know yet.

2 But we certainly hope that it's achievable.

3 And then through some of the other efforts
4 that we're going to do, we'll improve that number and
5 increase it to the point that potentially the excellent
6 number may be very high at some point. We hope that it
7 is. We want only what you want, what you expect, and
8 not some unachievable standard that nobody is actually
9 asking for.

10 Two things about the way we're doing the
11 review that might matter to you. And that is the fact
12 that we are trying to do both our review and our
13 reporting, and our recording for that matter,
14 electronically. And the reason that might matter is
15 that it will allow us to give almost real-time analysis
16 and statistical reporting on any particular issue that
17 we've looked at.

18 And in terms of not having to pull files, and
19 we aren't there yet because we're (inaudible) so many
20 offices move to electronic processing. But once that

1 happens, we're ready for electronic review, meaning we
2 don't have to pull files from the law offices. And
3 give you information -- try to locate a file, and we
4 have it for a period of time, sometimes cause troubles
5 for you.

6 I just wanted to give you heads up on that,
7 and that's the way we're headed.

8 And just three more issues very, very
9 quickly. In addition to looking at these first and
10 final actions, I just wanted to let you know that we're
11 starting the process of figuring out what other areas
12 within the Office are quality related. In other words,
13 what other things that are being done already maybe
14 that we can analyze and evaluate and figure out whether
15 or not they will help this quality.

16 And one of those specifically is the Official
17 Gazette Review of all the published marks. Every week,
18 everything that goes out is reviewed by the
19 Commissioner's office. Basically, it is large scale
20 for the decision-making, whether the right refusals

1 were issued and for identification and classification.

2 And we have someone who is in our group who is doing
3 an analysis of that so that we can figure out trends in
4 errors so that we can, hopefully, address some of those
5 in what we do later on.

6 MR. ORESKY: You gave me the impression that
7 you have an excellent category and a deficient
8 category. What happens if the treatment is good but
9 not excellent and not deficient? Do you record that?
10 Do people get feedback?

11 MR. WEBER: I'm glad you asked that. It's a
12 little bit (inaudible) we're handling right now. We
13 have been viewing it exactly the way you -- we are
14 going to look at this, and we are going to identify
15 those things that rose to the level of excellence or,
16 unfortunately, those at the level of being deficient.
17 And everything else is sort of in between.

18 The lack of errors has also been called
19 satisfaction. But we haven't specifically defined that
20 as an absolute criteria. We simply called it

1 everything else or neither of the above.

2 What we will do is report back individually
3 in all cases on excellent and deficient. We will use
4 everything else in between for our other measure for
5 training. And so we will use that on a broader scale
6 or a more general scale to identify the kinds of
7 mistakes that people are making and to report to the
8 whole group what would make the work rise from
9 satisfactory, sort of that middle-ground level, to
10 excellent.

11 We have reserved the right in our own minds
12 to somehow refer to some of those things as an advisory
13 to an examining attorney to let them know, you know,
14 hey, you know what? You were this close to excellent.

15 And here are some things that will be helpful to let
16 them know that up front. We will let them know that.
17 But our idea is try to figure out how to achieve an
18 overall goal of what is in the middle ground and bring
19 it all up to excellent.

20 The training issues are a big part of what

1 we're doing. And what I'd like to do maybe is come
2 back to the group sometime and explain some of the
3 training initiatives that we have taken in response to
4 the quality issue. And quality review is the starting
5 point for that and the area from which all of the rest
6 is going to rise up.

7 I will mention quickly that we have started a
8 number of e-learning on-line training kinds of
9 initiatives. It's very important for a couple of
10 reasons right now. One is as the Office starts to use
11 more electronic tools, as we will be training people
12 electronically, we found that it's the way to do it.
13 Let them get in and play with it and see how it works
14 for them, going to training on the FAST system that
15 Anne mentioned and a number of other electronic aspects
16 of examination.

17 And the on-line training gives us the
18 flexibility of our work-at-home group. And with the
19 examining corps in general, the experienced corps to
20 pinpoint is hard to very specific training. We're not

1 talking about the new attorney at this point. We're
2 talking about very specific examination issues that we
3 may find through our quality review that are only an
4 issue for some people. Or for, you know, if you want
5 to take a refresher course on a particular topic, we'll
6 have that available.

7 MR. ALEXANDER: Is there a mandatory ceiling?

8 MR. WEBER: We don't have one at this time.
9 It's an office decision if they decide to do so. But
10 what we've been doing is creating it and then letting
11 the office decide on that. We've made it available
12 based on, so far anyway, specific trends and problems
13 and things that we have seen. But we haven't taken a
14 position whether it's mandatory.

15 MR. MULLER: Can you tell me how your program
16 fits into the second set of eyes of the Strategic Plan
17 and where you're going in that regard?

18 MR. WEBER: Although it's not going to be
19 much of an effort, we don't in effect -- this is really
20 the in-process review. What we've been doing so far is

1 that. As far as I know, it hasn't been decided. I
2 don't know how much it's been discussed. The whole
3 second set of eyes is whether or not (inaudible)
4 whether it happens in the law offices or by managers or
5 by examining attorneys or what.

6 We're aware of that. And to the extent that
7 it comes into play with this group, we can discuss it.

8 Right now, this is the in-process review.

9 Just as the last point, to support supervisor
10 for the group. And not as supervisors but as
11 reviewers, quality reviewers and trainers. And we are
12 in the infant stages of developing a potentially new
13 program for all of the clerical support staff,
14 paralegal positions within the office.

15 There has never been quality review done
16 outside of their immediate work unit for any of those
17 type of positions. So we're going to do that. Put
18 some programs into place for measuring quality there.

19 And then for training, informal and formal
20 training in those areas. And the reason I think that

1 those will be, I think, useful to you is because an
2 awful lot of the issues that sometimes cause you
3 difficulties, I think, are some of these other clerical
4 support staff processing things. But they certainly
5 impact examinations and whether or not they're
6 substantive.

7 But we're going to look at what areas we can
8 address there to improve quality. And that's sort of
9 the future of where we're headed.

10 As I said, I would welcome the chance to come
11 back and talk about the training. If you're interested
12 at some point, I could also show you our electronic
13 data base and how we're using data and what is being
14 looked at from that standpoint.

15 MR. ALEXANDER: We will probably have a
16 subcommittee that we'll talk about later in this
17 session that will be specifically focused on this
18 issue. So rather than talking to the whole group,
19 there will be a group that will want to talk to you
20 about it.

1 MR. WEBER: I appreciate that. Thank you
2 very much. Any other questions?

3 MR. STIMSON: I have a question that's not
4 related to Brian's presentation, but I think is related
5 to quality and maybe Bob could speak to it.

6 I received a letter Friday from the NIPRA,
7 which is the National Intellectual Property Researchers
8 Association, which relates to their action about the
9 elimination of the paper search rooms. And I
10 understand this is just giving one side of the story.

11 In there they do talk about some quality
12 studies that the Office did about the reliability of
13 the electronic records specifically relating to design
14 applications and there being a higher error rate than
15 originally had been projected. And as a result of
16 that, the switch to fully electronic records and
17 searching has been, I guess, suspended.

18 And I was wondering if someone from the
19 Office could speak to that from two standpoints. One,
20 what does this say about the quality checking at the

1 Office if the original certification is inaccurate by
2 that much; and, secondly, is this going to hold off or
3 delay the switchover to a fully electronic office
4 beyond what is originally scheduled?

5 MR. ALEXANDER: Brian, unless this is in your
6 bailiwick -- I don't think it is -- we'll let Bob
7 address this. We'd like to thank you very much. And
8 we'll let Bob Anderson address that.

9 Let us go on to the next item on the agenda
10 which is, in fact, Bob Anderson's presentation of the
11 21st Century Strategic Plan Implementation Milestones.

12 Bob, would you like to put answering David's
13 question off; or would you like to start with it?

14 MR. ANDERSON: Actually, I cannot address
15 that because NIPRA and USPTO are currently in
16 litigation. It would be inappropriate for me to
17 discuss it at all. No comment.

18 MR. ALEXANDER: Well, the last time around, I
19 think, it was indicated that the Office was looking
20 into trying to correct it, dealing with their

1 subcontractor in the area to make sure that corrections
2 are made. But I don't know any more than you've told
3 me about that.

4 MR. ANDERSON: No comment.

5 MR. STIMSON: I understand that you can't
6 speak about the first part about when the quality
7 procedures in the office are to be used. Can you talk
8 about whether this is going to delay the electronic
9 filing implementation?

10 MR. ANDERSON: It will have a minimal impact
11 on TIS. And the Trademark Information System, we're
12 going forward with that. The issue that NIPRA has is
13 what's available in the public search room. And that's
14 an issue separate and apart from electronic
15 examination. So we are going forward with TIS
16 development and implementation.

17 MR. ALEXANDER: Thank you, Bob. Why don't we
18 go on to the next agenda item. We wouldn't press you
19 on matters that are in litigation.

20 MR. ANDERSON: I'm down for Implementation

1 Milestones for the Strategic Plan. Actually, Anne
2 addressed the third facet of the Strategic Plan this
3 morning which is pendency. As she indicated, we
4 believe that first action pendency will start to drop
5 later this year as we work through the amended cases
6 that built up last year from the 383 examiners we had
7 on board.

8 We did implement the productivity bonus in
9 mid-January. And we believe that's going to have a
10 positive impact. It will be reevaluated or evaluated
11 on March 31 which is the first pay-out date. If it
12 looks like there's a payoff from it, we are likely to
13 continue it through the second half of year.

14 We don't anticipate the pendency or the
15 number of first actions available will drop to a
16 critical level because we believe that the staffing
17 level we have right now is about right for the number
18 of applications coming in.

19 In any case, we believe that pendency will be
20 addressed this year. For back-end pendency, we also

1 anticipate it will stop dropping as we work through the
2 backlogs that built up over a long period of time.

3 As was indicated earlier, you've seen fairly
4 large OTs. Those are pending applications being pushed
5 through the system to registration or final disposal.
6 As those applications work through the system, and some
7 of the stuff is fairly old, we do believe that back-end
8 pendency will start to drop.

9 The total number of pending applications in
10 the office has dropped fairly substantially through the
11 past year and is continuing to drop. A large amount of
12 the pending application work that is currently in the
13 office is in for the ITU applications which have a NOA,
14 a Notice of Allowance. Or they've had a statement use
15 filed, and they are headed into the final examination.

16 So by the end of this year, we think we will be in
17 pretty good shape on pendency.

18 Brian Weber just addressed the quality
19 initiatives. And what we've talked about is pretty
20 much what we're doing so far in conjunction with the

1 Strategic Plan.

2 As you heard Sandy Weisman say earlier,
3 because we are on a continuing resolution and because
4 funds are limited this year, some of the activities in
5 the Strategic Plan, particularly in the quality arena,
6 we do not have funds to implement; therefore, we will
7 not be implementing them.

8 You saw the Senate mark. You saw the
9 continuing resolution. One of those two is likely to
10 be our funding for the remainder of this year. Under
11 either situation, funding will be somewhat limited.

12 The Strategic Plan itself, I just want to
13 remind you of the history of this thing. The Strategic
14 Plan was initially drafted in the early part of fiscal
15 year 2002. It was published in early June of 2002 and
16 has gone undergone some revisions since then.

17 However, when the Strategic Plan was drafted,
18 the Agency anticipated getting a budget as of October
19 1, 2003, that would fund portions of the Strategic
20 Plan. And we also did not anticipate that the Madrid

1 Protocol would be passed by Congress and sent to the
2 White House and that we would have one year to
3 implement it as of November 2, 2002.

4 Those two factors have had a significant
5 impact on our planning under the Strategic Plan and, in
6 particular, for the implementation of technology.

7 As Sandy indicated this morning, after the
8 Madrid Protocol passed, the Agency scrambled around to
9 find the money to do the implementation. The Agency
10 does plan on implementing the Madrid Protocol using
11 electronic media. In particular, as you've heard us
12 say several times, we are going to have electronic
13 filing of international applications. We do plan on
14 exchanging data with the International Bureau
15 electronically, and we do plan on attempting to
16 communicate with applicants for the Madrid Protocol
17 pretty much electronically because of the short time
18 frames in the protocol.

19 It is an unforgiving system. If you don't
20 answer the irregularity within three months, the result

1 is an abandonment. If you don't get the international
2 application to the International Bureau within two
3 months, you lose the filing date. You get a new filing
4 date. And there is no petition that says "I forgot to
5 do this, therefore, give me a break." It's you either
6 do it or you don't do it. And if you don't do it,
7 you're out of the system.

8 You will get half of your international
9 application fee back. You will get all of your request
10 for extension fees back. You will not get back your
11 processing fee charged by the Office for the
12 international application. So there would be some
13 expense associated with not meeting these time lines.
14 Your only option at that point would be to file another
15 request for extension of protection at an additional
16 cost, of course.

17 Madrid Protocol, original estimate to fully
18 fund implementation at the level we wanted was about
19 \$11 million. We then backed it down to \$9 million. We
20 now have about \$5 million to implement the Madrid

1 Protocol. Needless to say, these limits on funding
2 will have some impact on the bells and whistles on this
3 system.

4 We plan on having a very basic electronic
5 filing system and electronic communication system
6 available for working the protocol out the door. There
7 will be some parts of the system that will implement
8 exactly on November 2, 2003, particularly those parts
9 that won't happen for a while.

10 We will have the international application
11 available. We will have available an electronic
12 application for subsequent requests of extension of
13 protection. We will be able to send data to the
14 International Bureau. We will be able to receive data
15 from the International Bureau on request for extension
16 of protection in the U.S. and deal with them
17 electronically.

18 We will be able to handle color images. And
19 we will be able, because we already have the facility,
20 to communicate electronically with you regarding issues

1 related to international filings. Or if you are
2 representing an applicant, to answer request for
3 extension of protection in the U.S., you can do that
4 electronically also. But it will be a basic system to
5 start with.

6 Working with CIO, we've gone into what we
7 call a release mechanism. The first release of the
8 Madrid Protocol on November 2 will be Release 1. Then
9 we will get the Release 2, Release 3, and Release 4 and
10 so forth.

11 The Trademark Information System, again,
12 we've had to scale back the plan somewhat for
13 implementation. Initially, we assumed, without Madrid
14 Protocol, that we would have \$14 million to implement
15 TIS. Right now we have about \$7 million. So TIS will
16 not be as fully functional as we originally
17 anticipated. The biggest thing you won't see is
18 anything for post registration on the first release.

19 After November 2, 2003, the post-
20 registration activity will still be pretty much what it

1 is today. You will be able to file certain papers
2 electronically, but they will not have Electronic File
3 Wrapper available although what you do file into the
4 post registration will be captured in TICRS.

5 We will start to build Electronic File
6 Wrappers for post-registration activities, but we will
7 not be pulling post- registration files out of the
8 warehouse and scanning them into TICRS to create a new
9 electronic registration file for post- registration
10 materials. We will not have that capability available.

11 For TIS, we will have electronic file
12 management for all pending applications in the office.

13 We are working with a product called Biz-Flow. In six
14 weeks, they did a prototype for the front end of the
15 system. And we are very confident that we can have
16 electronic file management available for all pending
17 applications.

18 Pending applications can be filed, as you
19 know, electronically. You dump the electronically
20 filed application directly into the system. You will

1 still also be able to file on paper. If the fee bill
2 goes through, there will be a differential in cost,
3 \$325 for an electronic filing, \$375 for a paper filing.

4 If the fee bill does not go through, the fee
5 will stay at \$335 for some period until the fee bill or
6 some other mechanism changes the fee structure.

7 If you took a look at the fee bill, you would
8 notice that, rather than saying on October 1 the \$275
9 fee for expedited processing goes into effect, it
10 merely says that the Director will have authority to
11 make adjustments in the fee for expedited processing.

12 I am not sure that we will be able to
13 implement expedited processing on November 2, 2003,
14 because I'm not sure that sufficient levels of TIS will
15 be available to manage expedited processing. When we
16 put that on the table, it was based on having a full
17 bells-and-whistles, electronic file management, and
18 electronic capture system in place. We are currently
19 working with the CIO to get a better definition of
20 exactly what the first release of TIS will look like.

1 MR. ALEXANDER: Bob, what does CIO mean?

2 MR. ANDERSON: CIO is the Chief Information
3 Officer. That is Doug Bourgeois. He was here. He's
4 still here.

5 For about the past two months Trademarks and
6 CIO have been meeting at one level every day regarding
7 TIS and Madrid Protocol. We also have weekly meetings
8 at a very high level to review progress on the systems,
9 what's going on, where things stand. And then there's
10 a lower level team that meets on a routine basis more
11 than once a week on the status of these systems.

12 As we get further into the development of the
13 process and have things better defined, the meetings
14 will probably cut back some. But until we reach that
15 point, we will be meeting very frequently. And the
16 teams who are doing the system will be meeting almost
17 if not every day.

18 Now, Trademarks has six teams working on TIS.
19 They're all managed by a managing attorney or a senior
20 attorney in the organization. There are members on the

1 team, generally speaking, from the Trademark Systems
2 Division in the CIO area and members on the team from
3 the Office of Trademark Program Control, which is our
4 in-house staff for dealing with electronic systems.

5 Each of the teams has an aspect of the Madrid
6 Protocol and/or the Trademark Information System. As
7 Anne indicated this morning, a person who was a
8 managing attorney is now heading up the project, Ron
9 Sussman. We also have Chris Donnager and Adam Stregel
10 who are senior attorneys who are heading up most of the
11 Madrid Protocol activities and a large number of the
12 activities under TIS. So we believe we're getting up
13 to speed on stuff.

14 I'm much more confident sitting here today
15 that things will be done on time and will be
16 functional. Maybe at a very basic level, but they will
17 be fully functional on November 2, 2003.

18 Now there is no question that the Madrid
19 Protocol will be ready to go. There is some question
20 of how much of TIS will be ready to go. However, I

1 firmly believe that we will have functionality for TIS
2 that will change the examining process into something
3 much different than it is today where an examiner must
4 take a file wrapper with a bar code strip on it and use
5 a bar code device to take credit for cases. In the
6 future, the system will manage taking credit for cases,
7 give us management reports on-line, real time, so on
8 and so forth.

9 Examining attorneys will largely be working
10 with Electronic File Wrappers, if not exclusively
11 working with Electronic File Wrappers; and the world
12 will be a bit different for them.

13 MR. STIMSON: May I ask a question?

14 MR. ANDERSON: Sure.

15 MR. STIMSON: These potential delays you're
16 talking about implementing, are these all related to
17 technical issues in working out things in the system;
18 or are any of them caused by the Trademark staff?

19 MR. ANDERSON: No, it's largely budget. It's
20 largely having sufficient resources available to do the

1 work in the period of time that we have.

2 As I indicated, the original funding
3 available for TIS was \$14 million. I mean that amount
4 was put in the 2003 budget. In reality, we have
5 between \$5 and \$6 million to work with.

6 The original funding that was estimated for
7 full implementation of the Madrid Protocol was \$11
8 million. Then it was cut to 9. And it looks like we
9 have about 5 to 6 million to implement the Madrid
10 Protocol. So we have had a substantial decrease in
11 funding.

12 MR. ALEXANDER: At some point at one of our
13 earlier meetings, we said that we had to take \$7
14 million to do the Madrid Protocol.

15 MR. ANDERSON: Yes.

16 MR. ALEXANDER: Now you're at 5 and 9 and 11.
17 And I'm confused as to the numbers.

18 MR. ANDERSON: I'm talking about the
19 difference. You know, as Sandy said this morning, we
20 put requirements on the table. Now, the bulk of the

1 funding for both TIS and the Madrid Protocol was in the
2 OCIO area. And it's largely development costs for
3 contractors and in-house people to build electronic
4 systems for processing these activities.

5 When the requirements initially went on the
6 table, and this ranges in periods from two to three
7 years back, TIS was \$14 million. And that is, in fact,
8 the amount that was put in the 2003 budget. The Madrid
9 Protocol, because we had to answer to the House and
10 Senate on how much it was going to cost and because
11 this estimate was developed a couple of years ago, was
12 originally estimated at about \$11 million. It never
13 went in a budget because you cannot budget something
14 that is not law. But we did have to produce estimates
15 for committees on the Hill.

16 The Madrid Protocol passed outside a budget
17 cycle. So there's no money available and no money was
18 asked for in the 2003 budget because at that time it
19 was just a gleam in people's eyes. And the 2003 budget
20 was done about two years ago. We knew how much we

1 needed, but we couldn't ask for it because the
2 legislation had not passed.

3 So we had a \$14 million request in the budget
4 for TIS and nothing in the budget for the Madrid
5 Protocol, but we had a ballpark estimate on
6 implementation costs.

7 We come into fiscal year 2003, and we don't
8 have a budget, period. I mean we are sitting here
9 today with no budget. We are on a continuing
10 resolution at the 2002 level. The 2002 level for TIS
11 did not have \$14 million in it. As Sandy indicated and
12 as Anne has indicated and as I am telling you, the
13 priorities in this Agency are quality and then to move
14 to e-government and, finally, pendency.

15 Because those are major Agency goals, when we
16 sat down to slice up a much smaller pie, we decided TIS
17 gets a slice of the pie. Now at that time, the Madrid
18 Protocol still had not passed. So we put about, if I
19 remember correctly, \$6 to \$7 million out there for TIS,
20 a substantial cutback from the \$14 million that we had

1 originally requested. But we were trying to be
2 realistic in terms of how much money we might get.

3 Low and behold, after October 1, 2002, when
4 in theory we had the 2003 budget but didn't, the Madrid
5 Protocol passed. And we have a one-year implementation
6 period. So we had to fund it. We went back to the pie
7 and cut some slices a little smaller just so we could
8 get a slice out of it for the Madrid Protocol. That
9 slice is about \$5 or \$6 million, I think. Sandy said
10 7, but I haven't seen numbers that high. In any case,
11 it's way smaller than the original \$11 million
12 estimate.

13 Between the two projects, we have funded them
14 at about the level that we had originally funded one
15 project, maybe a couple million below the original
16 funding for TIS. We are going through the requirements
17 for TIS and going through the requirements for Madrid,
18 looking at what's common between the two systems so we
19 don't have to build the thing twice. But we're also
20 looking at here's what we absolutely have to do versus

1 here is what was essentially a bell or a whistle.

2 We're going to keep everything as simple as
3 we can. We want functionality not a lot of gloss and
4 shine. We believe that we will be able to have in
5 place, as I said earlier, basic operational systems for
6 TIS. And we know we'll have in place for Madrid an
7 operational system that will allow us to implement on
8 November 2, 2003.

9 I will be shocked if we don't have TIS
10 because at this point everything I'm seeing points to
11 success for both systems. But they're not going to be
12 fancy.

13 Yes, Siegrund.

14 MS. KANE: First, I'd like to say I think
15 every person who has spoken today has done a fabulous
16 job explaining what is a difficult situation. And how
17 you've juggled all of this stuff is just phenomenal.

18 Secondly, because of the cuts -- this is
19 something Miles raised this morning, and I don't really
20 have a clear handle on. But with respect to the Madrid

1 Protocol, will the PTO be notifying electronically the
2 applicants or whoever is supplying the applications of
3 these deadlines because if they're not met you'll lose
4 either your filing date or you'll lose your
5 international registration? Or don't you know yet.

6 MR. ANDERSON: For those things, what we are
7 required to notify -- the Protocol has a whole set of
8 rules that governs activities under the Protocol. In
9 some cases, the Agency is required to be the responder
10 to the Protocol such as on classification and goods and
11 services. And if you pay your fees through the Agency,
12 then we have to forward the fee to the International
13 Bureau. And we also take refunds from the
14 International Bureau and give them back to you.

15 Depending on what the rules of the protocol
16 say, we have to correspond with you. Where we are
17 merely a go-between between the IB and the applicant,
18 we will communicate electronically with the applicant.

19 One of the reasons that it was a primary goal
20 of the Office to get to electronic filing for this

1 system and electronic communication is because of the
2 short time frames.

3 Now initially, as I think Lynne indicated, we
4 were talking about, okay, we will always send an e-mail
5 or something to the applicant when we get something
6 from the IB. That was one -- as we get into this
7 thing, because of the limits on funds, there are some
8 things that are going to be a little hard for to us do
9 right off the bat.

10 What we plan on doing is getting a basic
11 system in place like we have with other systems that
12 we've built. And then based on requirements of the
13 applicant, put things into it. And I think the
14 Trademark Electronic Application System (TEAS) is a
15 good example of that.

16 The first TEAS application that we put out
17 was pretty basic when you get right down to it. Based
18 on input from applicants, we have substantially changed
19 that application. And we have also added applications
20 to the portfolio, based again on requests from TEAS

1 filers. But we used to have one way to put a signature
2 on. We now have three different signature protocols.

3 You used to only be able to pay by credit
4 card. Now you can pay by credit card, ACH, or deposit
5 account. So based on applicant input, we have done
6 things to TEAS.

7 We plan on doing the same thing with TIS and
8 with the Madrid Protocol. We feel like we've been very
9 successful in putting out kind of basic systems or
10 basic applications, then going to the people who use
11 them and saying how would you like to see this work
12 better.

13 We plan on doing the same thing with the
14 Protocol and with TIS. I mean we want to try to build
15 a system that will respond to your needs as much as it
16 responds to ours.

17 So we're going to build an electronic
18 foundation. And then, if you come to us and say, look,
19 you know, it would be really nice if, every time there
20 was a communication from the IB that they send it to

1 you electronically, you forward it to me. That's not a
2 big deal to do in an electronic system. It is a huge
3 deal sometimes to do in a paper system depending on the
4 level of activity we have in that system.

5 To answer your question, you may not have it
6 right at the start depending on what the interchange is
7 between the International Bureau and the Office. But
8 if you ask for it, as we do second and third and fourth
9 releases of this system, you're likely to see it.

10 MS. KANE: So it's going to be very -- I
11 think this is the point Miles was making this morning.

12 It's going to be very important for the attorneys and
13 the applicants who are handling this that they know
14 that these are the drop-dead deadlines. You're not
15 going to know immediately until you tell those
16 (inaudible).

17 MR. ALEXANDER: You're not going to be force
18 fed. And I think that this simply means that we have
19 to learn the Protocol and set up our own systems as
20 fail-safes. And we're lawyers; we ought to be able to

1 do that. And I think the seminars that will be going
2 on will identify the drop-dead dates and identify when
3 you want to be checking back with the Office. It is
4 either electronically available information to make
5 sure something has been done or hasn't been done.

6 MS. KANE: Is there anything cheap, not too
7 costly, that you could do in your first release that
8 would highlight this issue of these drop-dead dates? I
9 know the material highlights it. I know people have
10 lectured on it. But not everybody goes to the
11 lectures. And there's a lot of people practicing out
12 there where this is going to be Greek to them.

13 MR. ANDERSON: Okay. To answer that
14 question, Lynne can jump in if I'm getting off base
15 here.

16 One of the things that we're talking about
17 doing. The International Bureau has an Administrative
18 Procedures Guide. Lynne had it this morning. You
19 might have seen a big red book sitting right there.

20 MS. BERESFORD: Show and tell, yes.

1 MR. ALEXANDER: That's just what you wanted,
2 right.

3 MR. ANDERSON: It's one of the documents that
4 the IB does; and, unfortunately, it was probably
5 originally written in French and then translated into
6 English. And in reading it, it kind of reflects that.
7 It's not the easiest thing to read. However, it is
8 much easier to read than the rules under the Protocol.

9 It's much easier to deal with them than the rules
10 themselves.

11 And that is available on line by the way. If
12 you go to the WIPO web site, the administrative
13 guidelines are available at the WIPO web site today.
14 And they're very helpful.

15 The U.S. Office is planning to do its own
16 administrative guidelines for the Protocol. And we
17 should be able to layout in a more succinct manner
18 those deadlines that you have to comply with and
19 further what the U.S. Office believes it needs in terms
20 of processing time to ensure that we get a response to

1 send an irregularity from the International Bureau back
2 to them to save your application.

3 MS. KANE: Okay.

4 MR. ANDERSON: Because we will be
5 communicating electronically, that should cut down on
6 some of the problems particularly if you as the
7 applicant communicate to us electronically.

8 MR. ALEXANDER: Bob, speaking of that, Anne
9 said we were at 52 percent applications that were being
10 submitted electronically last quarter. Do we
11 communicate to any of the paper filers who are not, who
12 are recalcitrant electronic filers? Do we have a
13 system that sends to them the advantages of converting
14 to electronic filing so that we target the people that
15 we need to convert?

16 MR. ANDERSON: Probably the closest we come
17 is Craig Morris, who is an employee of the USPTO and is
18 seldom seen around the Agency. He spends a lot of time
19 on the road trying to help law firms and corporations
20 who have an interest in, and, in particular, bar groups

1 in various cities, moving toward electronic filing.

2 We have had INTA occasionally put something
3 in their bulletin. We clearly have a lot of stuff out
4 on our web site. Do we have a specific campaign where
5 we add something to examiner letters or something? No.

6 MR. ALEXANDER: I was wondering if it makes
7 sense to really target the group that is not using
8 electronic filing specifically by having an insert that
9 goes out with first office action, essentially, saying
10 why they should not be using paper. It's not an
11 expensive thing to do.

12 MR. NICHOLSON: I would just note that a lot
13 of courts are doing the same thing. With your first
14 filing, you get a notice from the court saying you
15 could have done this electronically.

16 MR. ALEXANDER: Most districts courts are
17 doing that now, and it's converting people quickly.

18 MR. ANDERSON: We can start doing that. I
19 mean, adding a form paragraph to a letter, in fact, is
20 actually probably just set it up so that it goes in

1 automatically. The examiner wouldn't have to do
2 anything.

3 MR. ALEXANDER: And put a bunch of stars
4 right in front of it so people would read it.

5 MR. STIMSON: Just don't send it by e-mail.

6 MR. MOYER: I would just like to say P&G was
7 one of the earliest adapters of the electronic filing.
8 And I can really compliment the Office on embracing
9 changes. We got there real quickly in terms of our
10 filings. I heard earlier we had 270 days. That seems
11 like a short time, but that also seems like a long time
12 I think. It's meetings like this that are getting
13 things out on the table, saying this is what we've got
14 to have.

15 INTA is doing a presentation in early March,
16 kind of going through the nuts and bolts. So I think
17 getting these questions out there and what
18 practitioners and applicants need to know and want to
19 know, I think, it's going to be real clear as the
20 spring turns into summer turns into fall.

1 MR. ALEXANDER: I'll tell you why I'm very
2 serious about this. Most lawyers would not send a copy
3 of the response from the trademark examiner to their
4 client if the response starts with saying you're an
5 anachronism.

6 MS. KANE: Well, that's a little harsh.

7 MR. ALEXANDER: They're going to be very
8 reluctant to send them to their client. And saying it's
9 something short of that can really wake people up and
10 make them join the 21st century. And I would not just
11 sluff it off as a suggestion that's not going to result
12 in an increase in electronic filing. Because I think
13 if you target violators of what you want to happen,
14 their clients are going to learn about the fact they're
15 not doing it. If you say it will cost you more to file
16 an application, nothing will get the client's attention
17 faster.

18 MR. ANDERSON: I think -- okay. On November
19 2, 2003, there will be one application filed at the
20 USPTO that you must file electronically. That is the

1 international application. You will not have the
2 option of submitting paper. If you do, you will not
3 get a filing date. So all of a sudden in seven or
4 eight months, there's a whole series of applications
5 and forms that, if you don't file them electronically,
6 you don't get into the system. And it's a fairly
7 important consequent, i.e., you lose a filing date.

8 So some law firms who are major prosecutors
9 of U.S. applications who still have not gone to
10 electronic filing, and there are a few. We know their
11 names. We go through and pull them up and check by did
12 they file electronically or on paper over the past
13 year. And there's some major firms out there who still
14 -- the number of electronic filings approaches zero.
15 Where the number of paper filings is up in the two or
16 three thousand.

17 MR. ALEXANDER: You find paralegals handling
18 the application.

19 MR. ANDERSON: Right. But some of the major
20 prosecution firms will probably also be some of the

1 firms who do a lot of international applications once
2 the system gets going. They will have no option at
3 that point other than to adopt electronic filing.

4 I also believe some of the stuff that is on
5 the table between now and next November in the Office
6 to make electronic filing more convenient to applicants
7 will probably encourage other people to move to the
8 system. I won't sit here today and tell you it's been
9 the easiest system or the best system in the world.
10 It's been good, and it's getting better.

11 Some of the enhancements were various things
12 like office actions and so forth that are planned
13 between now and next November. These, I believe, will
14 encourage more people to use the system.

15 And one lesson I learned early on, and
16 actually I think Kim participated in pilot for a system
17 called EASE. One of the people -- and it might have
18 been Kim for all I know -- made a comment during that
19 pilot and said -- I won't say what they said about the
20 word "easy" relative to the system that we had in

1 place. But they did say that the electronic
2 application has to be straight forward and simple to
3 use. If I can sit down at my desk with a ball point
4 pen and a piece of paper and fill out an application,
5 the electronic application needs to be at least that
6 straight forward.

7 So when we designed our on-line version of an
8 application for use by filers, we tried to keep it
9 pretty straight up and simple. And I think we achieved
10 that as evidenced by the fact that 52 percent of our
11 filers are now using the system. And our focus is
12 still on that goal of trying to keep this system pretty
13 straight up and simple for applicants to use.

14 If you have suggestions that you believe --
15 if you're not a convert yet, if you have a suggestion
16 that would help make your law firm or yourself a
17 convert, we are more than willing to look at it. We do
18 have many things on the table. And several things are
19 scheduled to implement towards the latter part of this
20 year that I think will make the system more usable.

1 We will take into consideration trying to
2 work, you know, go back and take a look and see if we
3 can work with INTA and other bar groups to move more
4 people over to using the system. We haven't done that
5 for a while.

6 MR. ALEXANDER: Maybe you ought to publish a
7 list of the firms. If my firm's name is on it, please
8 let me know.

9 MS. KANE: Weren't there some bar groups that
10 felt that you shouldn't make it a penalty or you
11 shouldn't hold up to ridicule people who were using the
12 paper system, that the paper system was there, and it
13 was used for whatever reasons by people. But this
14 isn't the time when we say you're a violator or you're
15 a --

16 MR. ALEXANDER: You don't want your name --

17 MS. KANE: No, my firm does it. My firm does
18 it. It's not my name. You know just looking at the
19 bar in general and people, what you're doing, I think,
20 and as you've said, that will encourage it. That in

1 fact if you don't file electronically on Madrid, you're
2 not going to get one. I'm just sort of hesitating on
3 the possibility of a boilerplate statement in every
4 single response that says you're ridiculous if you
5 don't file electronically.

6 MR. ANDERSON: I don't think we would
7 probably do something like that. When we try to sell
8 the system, we try to point out the benefits. One of
9 our early campaigns to try to get people to move to the
10 system -- Chris Donnager, who's in the office now, used
11 to work for Narvitis. And while he was at Narvitis, he
12 basically gave us a scenario for Narvitis filing an
13 application. Swiss-based company. They would initiate
14 the filing for a U.S. application in their headquarters
15 up in New Jersey, send it to Switzerland for signature
16 by a corporate officer, and it would come back. And
17 Chris would have it filed in the office within 24
18 hours.

19 Now the best you can do otherwise is to use a
20 fax machine and so forth and do the same thing. Those

1 parts of the application that you can't do by fax, you
2 have no option but to put it in snail mail and ship it
3 back and forth.

4 We did hype the system with things like that.

5 I mean, the reality is that you can just work much
6 faster electronically than you can on paper or even
7 using fax.

8 And you're right. It probably is time for us
9 to go back and do that kind of push again, to point out
10 to people the advantages of using the system.

11 I'm sure there are many people who are not
12 aware that you can now file office action responses
13 electronically. But looking at the list served, there
14 are some people who have a very positive reaction.

15 I know we've been successful when the list
16 serve goes from "I hate it" to "why does it do this and
17 couldn't it do it better?" Because people are looking
18 at it different. And you know the list serve started
19 out by criticizing the electronic response form. And
20 now most of the stuff I see on the list serve goes to

1 here's what they could do to improve it or why does it
2 do this weird thing, or why can't I make an amendment
3 to supplemental register using it.

4 Sometimes it's just a matter of knowing how
5 to do it. You can't actually amend a supplemental
6 registration in the response form. It's not obvious.
7 You do have to fill out a few miscellaneous text
8 fields.

9 Those kinds of things I see as very positive
10 because people are taking a different view of what
11 we're doing. And like I said, if you ask for
12 something, we'll try to put it in there if the cost is
13 reasonable and if we can do it without pulling away
14 resources we need to do Madrid and TIS right now.

15 MR. STIMSON: T-PAC has been talking for a
16 couple years about the importance of getting as much
17 electronic filing as possible. I think we have a goal
18 -- you have a goal -- of 80 percent in a year or so.
19 And you talked about the 52 percent electronic filing
20 this quarter. How does that fit in with your

1 projections? Are you on target?

2 MR. ANDERSON: If you would have asked me
3 last year, our goal was 50 percent electronic filing by
4 the end of the year. At this same point last year, if
5 you would have asked me that question, I would have
6 been hesitant to say that we were going to reach 50
7 percent. When in fact we did reach 50 percent in
8 September last year, and then through the first quarter
9 of this year, we've maintained a 50 percent, some
10 people think it's because we eliminated 110. I would
11 like to think it's because we have a very good
12 electronic application and people are moving more and
13 more to using it. But I'm sure that eliminating 110
14 had an impact.

15 If the new fee bill goes through, and there's
16 some optimism that it might, and the cost of filing a
17 paper application goes to \$375 and the cost of filing
18 electronically is \$325, I have a sense that that will
19 have some impact on how many people file
20 electronically.

1 At the midyear meeting, if you guys do that,
2 that eliminates my options. I'm going to have to file
3 electronically because clients won't accept 50 more
4 bucks for filing an application when all I have to do
5 is get on line and file it.

6 What I'm saying is if the fee bill goes, then
7 I think it becomes almost a no-brainer. If the fee
8 bill doesn't go through, I think it will be more
9 dependent on the Office to sell the system more
10 strongly, to provide enhancements, to make it more
11 suitable for law firms and corporations.

12 So if the fee bill goes, I'm highly
13 optimistic that we will be at 80 percent if not higher.

14 If the fee bill doesn't go, I think it will be dicey.

15 But we'll clearly be substantially above 50 percent.

16 I don't know if we'll be at 80.

17 MR. MULLER: Bob, have we done an analysis to
18 determine the breakdown of the 50 percent that aren't
19 filing electronically between 1A, 1B, and 44?

20 MR. ANDERSON: No. We have done an analysis

1 between the number of law firms and corporations who
2 file more than 25 applications who don't file
3 electronically. Our general sense is that more people
4 file electronically when they're filing an ITU more
5 than anything else. Of course, ITU makes up 65 percent
6 of our filings.

7 Use applications, as Siegrund pointed out
8 this morning, people still have trouble dealing with
9 attaching specimens or figurative elements as drawings.

10 It's fairly easy to do, but you can't do it if you're
11 not somewhat familiar with computer technology. You
12 know, scan something in and creating a suitable J-PEG
13 document to submit to the Office is not something that
14 most people are willing to learn, depending on their
15 age and so forth.

16 I think at some law firms, as has been
17 pointed out, the paralegals do most of the filing.
18 And, you know, send them off and train them; and they
19 can probably handle it pretty easily.

20 The technology, quite frankly, it's getting

1 easier and easier to use. Issues that were sitting out
2 there five or six years ago don't exist today. You can
3 buy a digital camera for a couple hundred dollars that
4 will give us specimens that are fine. And you can buy
5 a scanner for 50 bucks that will do a great job on
6 capturing and submitting the information to the Office.

7 You just have to pay attention to the DPIA and stuff
8 you're scanning. The technology is no longer expensive
9 or difficult to use.

10 MR. ALEXANDER: Griff.

11 MR. PRICE: I would like to go back to the
12 suggestion that was made that some kind of notice be
13 included with each first office action. It seems to me
14 it would not be necessary to include that in the office
15 action itself. But if a separate one-page document
16 were included with some statement about the process,
17 the benefits of electronic filing, and a little
18 encouragement to use it, that would parallel the kind
19 of information that's provided by district courts in
20 many jurisdictions now, as Joe mentioned, about

1 electronic filing and fax receipt of court documents
2 and so on. I think that would be worth a try.

3 MR. ANDERSON: I just heard Ron and Chris and
4 Adam volunteering to take that on. I'm sure they'll be
5 looking at that.

6 No. We've heard you loud and clear on that.
7 We will be taking a look at that. We have, in the
8 past, inserted pages into all outgoing letters. And we
9 can do that relatively easy.

10 Another thing we might try, some of you may
11 be aware we have a system called E-Postal now.
12 Abandonment notices are being sent to you through this
13 system. We just send an electronic file over to the
14 Post Office. And they ship the file out to five
15 regional centers and send post cards to applicants. We
16 have used that a couple of times to advertise things in
17 the office.

18 And that might be another way of doing that
19 is that we can send the Post Office a file and, you
20 know, we can literally strip off all the applicants in

1 the past 18 months or so and send a postcard to
2 everybody in the country advertising e-filing. And we
3 can do that on a routine basis relatively cheaply,
4 actually much cheaper than inserting a piece of paper
5 in another envelope.

6 MR. ALEXANDER: Does that go to e-filers?

7 MR. ANDERSON: Yeah. That goes to everybody.

8 MR. ALEXANDER: Right. To me that's not the
9 target group. There's something that --

10 MR. ANDERSON: We can eliminate e-filers.
11 That's easy for us.

12 MR. ALEXANDER: I'd like it to be an office
13 response as opposed to a separate piece of paper. I
14 think that does go to a client worded, and it has to be
15 worded in a way, not an offensive way, but in a way
16 that would make the lawyer want to start using
17 e-filing.

18 MR. ANDERSON: Right.

19 MR. MOYER: I have a question. We talked
20 about the new fee proposal and that we'll probably have

1 the most concern for people who file electronically.
2 Maybe we talked about this before. But what's the
3 expected timing on whether that will go through or not,
4 the difference between paper filing and electronic
5 filing?

6 MR. ANDERSON: The Agency is very optimistic
7 that this thing is going to go. Now, I have to tell
8 you that it's dependent to a significant extent upon
9 the continued support of the bar groups and others in
10 the private sector on this package.

11 As you heard Sandy say this morning, under
12 the 2004 budget, about \$99 million would not be given
13 to the Agency out of the total money available.
14 However, this Administration has made a commitment to
15 slow down and eventually end diversion.

16 If the bar groups are still supporting this,
17 and I know IPO appears to still be on board with the
18 plan -- I'm not sure about AIPLA and ABA because I
19 haven't seen anything recently out of those groups -- I
20 would think the fee package has a pretty good chance of

1 going. If some strong opposition emerges from the
2 private sector to the fee package, depending on the
3 climate on the Hill at the time, that could slow it
4 down or stop it. It's very hard for me to predict.

5 The Agency is very optimistic that it will be
6 in place October 1, 2003.

7 MR. MOYER: Thank you.

8 MR. ALEXANDER: We are one of the groups that
9 have been a problem. Let there be no mistake about it.

10 I think the ABA section has been a problem, too,
11 advocating that, as long as there's diversion, there be
12 no fee increases not justified by cost needs.

13 I read the ABA report from Baker from, I
14 guess, last fall which made a statement pertaining to
15 diversion and the T-PAC report as sort of a matter of
16 standing on principle not being pragmatic and taking
17 what you can get. And we stood on principle on the
18 diversion issue. That may, in fact, not be to the
19 benefit of the USPTO desires on electronic filing.

20 We didn't want your remarks to go over

1 anybody's head.

2 MR. PRICE: Bob, I have a question about your
3 comments about the potential scenarios for funding.

4 Is it your expectation, I think you said,
5 that you do feel at this point that the funding for
6 fiscal year '03 is either going to be at the level of
7 the continuing resolution or at the Senate mark? Is
8 that correct?

9 MR. ANDERSON: From what we know right now,
10 that's what we anticipate. We have not heard anything
11 off of the Hill about what is that discussion in
12 particular related to USPTO funding. Since it is an
13 omnibus bill, it means they will probably deal with
14 very large agencies as opposed to the PTO.

15 In my mind, \$1.3 billion is a lot of money.
16 If I had it, I probably wouldn't be sitting here
17 talking to you. But in the scheme of things in the
18 federal government, it's not a lot of money. And how
19 much attention is being paid to the USPTO budget, I
20 don't know.

1 There is a House mark also -- actually, not a
2 mark. There's a recommendation from Frank Wolfe's
3 committee on how much money the USPTO should get. And
4 if we got that amount of money, we would be in pretty
5 good shape relatively speaking.

6 MR. PRICE: If discussions are held between
7 the House and Senate before the adoption of an '03
8 budget, isn't it likely that there will be some
9 compromise between the House proposal and the Senate
10 before it can be reached?

11 MR. ANDERSON: If they go to conference,
12 generally speaking, they usually compromise. Yes.

13 MR. ALEXANDER: We've talked about the
14 electronic filing as, I think, your implementation
15 stones to the Strategic Plan. And, of course, there
16 are a lot of other milestones other than electronic
17 filing.

18 Are you saying that the budget shortage is
19 going to stop us from doing a lot of things such as the
20 second-set-of-eyes proposal and the pilot programs in

1 various areas until such time that the budget is going
2 to be around? We're really not addressing those
3 milestones right now because they're not in effect. Or
4 are they still going to be implemented over the next
5 year in some respects?

6 MR. ANDERSON: Implemented over the next year
7 in some respects. As you heard earlier from Brian
8 Weber, we are implementing the in-process quality --
9 oh, I'm sorry. We are implementing the in-process
10 quality review.

11 Second-set-of-eyes, that will be a resource
12 issue. Second-set-of-eyes may be unlikely to be able
13 to be implemented if we have inadequate funding.

14 The second part of that is the
15 second-set-of-eyes will not come in until expedited or
16 priority examination comes in. That is not going to
17 come in until we have a fully operational TIS
18 environment. And fully operational may mean a little
19 more than what we will have implemented on November 2,
20 2003.

1 Fully operational means we have electronic
2 file management which I am confident will be
3 implemented. But it also means that we will have the
4 ability to have Electronic File Wrappers for all
5 pending applications regardless of whether it exists at
6 that point in time or if we have to create it.

7 On November 2, 2003, we will still have a
8 large number of pending paper applications. To create
9 an Electronic File Wrapper, the plan is to do what is
10 called "on-demand scanning." If you filed an amendment
11 to the application, we would send the application down,
12 have it scanned into the system, added to TICRS, scan
13 in the amendment if it came in on paper, and then send
14 that electronic file to the examiner.

15 I am not as confident that we will have a
16 fully functional on-demand scanning system next
17 November as I am that we will have electronic file
18 management in a large number of our applications as
19 electronic files.

20 I mean there's a certain number of

1 applications where everything you see in the paper file
2 wrapper is also in TICTRS. But that does not hold true
3 for all applications, particularly for things filed
4 prior to 1999. And then there are still a lot of those
5 in the system. So expedited exams may not be available
6 on November 2, 2003.

7 Therefore, until it is available, we won't be
8 looking at second-set-of-eyes because they're tied
9 together. And there would also not be a \$275 fee for
10 filing an application because that's the fee for
11 expedited examination.

12 MR. ALEXANDER: The second part of that
13 question went to implementation of some of the pilot
14 programs. And one of the reasons I asked this is that
15 Howard has a family emergency so he's not here with us.

16 But if this is not an issue that's critical at this
17 meeting, I don't want to try and disturb Howard with
18 questions at this point.

19 It strikes me that the implementation of much
20 of what we were talking about of concern to him is not

1 going to occur over the next six or eight months. And
2 we'll have other meetings to discuss concerns about it.

3 And I'm talking about the use of paralegal and staff
4 to go with examiners which is part of the
5 implementation of a pilot program. Is that safe?

6 MR. ANDERSON: Again, the notion of using
7 paralegals was tied to electronic file management,
8 Electronic File Wrapper. If it is not fully
9 functional, we would not be moving to start selecting,
10 training, and setting up a prototype for use of
11 paralegals in the examining process.

12 Because I'm not sure at this point in time
13 exactly how much of TIS will be completed next
14 November, I can't sit here and tell you we'll be
15 working on a paralegal program for next November.

16 The paralegal program itself, if it's going
17 to be functional, I believe it's mandatory that we have
18 Electronic File Wrapper. I mean we've tried things
19 like paralegal examination or examination assistance in
20 the past with paper file wrappers, and it hasn't worked

1 because moving paper around in our environment just
2 doesn't work well.

3 MR. ALEXANDER: Everybody has to have access
4 at the same time.

5 MR. ANDERSON: Everybody has to have access
6 at the same time. And the only way to have that is
7 through Electronic File Wrapper. And as I said
8 earlier, I'm not sure that Electronic File Wrapper will
9 be fully available next November at least the on-demand
10 scanning part of it.

11 MR. ALEXANDER: When is the soonest that it
12 is likely to be looked at and begin to be implemented?
13 Is it 2004?

14 MR. ANDERSON: This is an if/and answer. If
15 House and Senate gave us the House mark on the 2003
16 budget which would increase funding, then we would be
17 talking to the CIO about how much stuff we could have
18 done between now and next November. I am told,
19 however, that simply throwing more money at things
20 doesn't necessarily ensure that everything moves

1 faster.

2 We would go back and take another look at the
3 plan. And if more money would allow us to do something
4 more quickly, bring a few more contractors on, that
5 might move us closer to being ready to go in November.

6 At this point in time, I doubt it. With
7 Madrid, we're a little bit behind the curve, I mean, in
8 getting TIS running. I don't mean we're not behind the
9 curve on Madrid. We're behind the curve in getting TIS
10 running because of Madrid. And I think that's a
11 problem.

12 In discussions with CIO, simply getting more
13 money is not going to change that dramatically;
14 therefore, the paralegal program we will probably be
15 having the same discussion about the same time next
16 year. Or somebody will.

17 MR. ALEXANDER: Not me. But that's what I
18 thought. I wasn't urging you to do this prematurely.

19 MR. PRICE: To return to a point that
20 Siegrund has made a couple of times, if funding

1 permits, if additional funds are available this fiscal
2 year, I would, like Siegrund, feel an added level of
3 comfort if some of those funds were extended in
4 connection with implementing Madrid for the purpose of
5 making sure that applicants and applicant's attorneys
6 are fully informed of the drop-dead deadlines.

7 MR. ALEXANDER: You understand we represent
8 user groups and attorneys.

9 MS. KANE: Applicants and attorneys represent
10 users. I mean, you know --

11 MR. ALEXANDER: I'm just kidding, Siegrund.

12 MR. PRICE: I'll stick to my guns.

13 MS. KANE: Me, too.

14 MR. ANDERSON: Again, in the original 2003
15 budget, Trademarks had, if I remember, somewhere
16 between a half-million and a million dollars for
17 publicizing TIS, giving people assistance in moving
18 into electronic filing. And, of course, now with
19 Madrid, it would be added to that. I'm not sure how
20 much of that funding is available to do something like

1 that.

2 Now, if we get more money than we anticipate
3 at this point, then we could do some of those things
4 easily.

5 And I do want to add, however, as was
6 indicated earlier, the Trademark Assistance Center is
7 being substantially enhanced. We've added some very
8 good people down there. We've expanded the staff.
9 We're expanding the training. And the Trademark
10 Assistance Center will be a major part of helping
11 people deal with Madrid.

12 And we are talking about the proper type of
13 training to give to the Assistance Center so when
14 somebody comes in and asks one of those Madrid
15 questions, people can get answers. We will have Madrid
16 specialists so to speak available to deal with some of
17 the nuances of this system.

18 MS. KANE: I want to echo what Griff just
19 said.

20 Isn't there some simple, non-costly way to

1 put some notice on some document that will have to go
2 through your office to an applicant that says beware of
3 these deadlines. Just something that is simple so that
4 all those people out there who haven't been attending
5 seminars and who don't call people at the Trademark
6 Assistance Center...

7 MR. ALEXANDER: Like you have six months to
8 respond to this office action.

9 MS. KANE: That's exactly what I mean, Miles.

10 MR. ANDERSON: I don't want to jump too far
11 into this one because, actually, Lynne probably bears
12 greater responsibilities for doing some of these things
13 than I do. I don't want to commit her too deeply.

14 But I believe that as we get more -- you
15 know, right now our focus is on doing the rules and
16 setting up the internal process for handling Madrid.
17 As we approach publication of the rules package and
18 those things that are on their way, then we're going to
19 turn and do an administrative guidelines.

20 And I would have to guess that some day there

1 is going to be a one or a two pager that's going to
2 give you kind of a fast overview of the time lines and
3 everything else associated with Madrid: Filing an
4 electronic application, if you get a notice from the
5 office, we still have to have it to the IB in two
6 months; if you get an irregularity notice, here's what
7 you have to respond to; here's what you have to respond
8 back to the office too because we're required to send
9 it; here's what the fee structure is.

10 MS. KANE: But what you're talking about is
11 something quite comprehensive. And all I'm trying to
12 suggest is that some simple notice, not explaining the
13 whole procedure, not explaining, just some simple
14 notice to beware of these deadlines. Maybe that's not
15 possible.

16 MS. BERESFORD: Bob, what the International
17 Bureau sent out has the deadlines stated in its notices
18 from the International Bureau. So in essence, they do
19 the same thing we do when we send out office actions.
20 We say, you know, respond to this office action within

1 six months. They've set the deadlines for responding
2 in formality in their notices.

3 We will do a guide, and we'll probably try to
4 figure out a simple chart or something so the people
5 can post on the inside of their cabinet door to look at
6 that says, you know, you have to respond at these
7 times. But each situation is particular. And I think
8 probably the notices that come out from the IB set out
9 the deadlines.

10 MR. ALEXANDER: Let me suggest we take our
11 break right about now, continue to flow into the next
12 agenda item, which is the implementation discussion
13 which is pretty much the same as implementation
14 milestones.

15 And, Bob, if you would bear with us and stay
16 with us, I think work into that portion.

17 Let me ask each of the members of the T-PAC
18 indicate to tell me during the break whether they have
19 any committee preferences. And when we get to that
20 agenda item right after the next one, I would so like

1 to know your preferences on whether you want to do the
2 TTAB, Quality Control, Madrid.

3 We only have six members here that continue
4 to serve past July. And Leslie Lott is unfortunately
5 on trial and couldn't be here today. We only have five
6 members who will actually be on the committee for the
7 whole year, so it's important that everybody but Joe
8 and David Stimson give some real thought to what's
9 maybe a one-person committee.

10 Thank you.

11 [Break taken at 3 o'clock; resumed

12 at 3:19 p.m.]

13 MR. ALEXANDER: I'm going to take the last
14 item off -- not the last item, the committee
15 assignments off the agenda because during the break
16 everybody agreed upon a committee on which they are
17 going to serve. And I think it's probably worth making
18 it a matter of record now.

19 Siegrund Kane is going to serve on the TTAB
20 committee and deal with also the appellate questions

1 that have been raised.

2 Leslie in her absence has been assigned to
3 the TTAB committee and to any other committee we need
4 anybody on.

5 Jon, you're going to deal with quality
6 control.

7 Griff, you're going to deal with e-office;
8 David Moyer, Madrid. And, Kim, you wanted to deal with
9 quality control as well.

10 MR. MULLER: Yes.

11 MR. ALEXANDER: And I think that covers all
12 of the members that survive the July term fiasco that's
13 going to occur again when three of us rotate off and
14 there are no replacements. But the three that are
15 rotating off, Joe Nicholson and David Stimson and I,
16 will take on the undertaking to draft legislation which
17 we would propose to the T-PAC.

18 And if the T-PAC wants to go forward with it
19 as well to solve the term issue, fine. We've not
20 gotten any assistance from any legislative drafting

1 group at the USPTO or the government or the legal
2 counsel's office, which I understand is not responsible
3 for drafting legislation. But I think the only way
4 we're going to get anything accomplished is taking it
5 upon ourselves and perhaps submitting it to Congress
6 ourselves if necessary with the backing of
7 organizational groups so that we don't have a
8 dysfunctional T-PAC for years to come.

9 That having been said in the nicest way I can
10 say it, I think we'll go back to the last item on the
11 agenda now which is a continuation of the discussion of
12 the Strategic Plan Milestones and Implementation.

13 And, Bob, I didn't know where you were in
14 completing your comments. But I think any comments or
15 questions by the T-PAC relative to those issues would
16 now be in order as well. So why don't you continue
17 first and finish what you were going to deal with. And
18 then you'll be a happy participant in the questions
19 that people may have, other members of trademark
20 operation.

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1 MR. ANDERSON: I can get through this fairly
2 quickly.

3 I just wanted to respond again to Siegrund
4 and reiterate what Lynne said. As we normally would,
5 if we send out something from the office related to the
6 Madrid Protocol, we have the response time in it.
7 That's pretty much routine for anything we sent out.
8 So if there's a three-months response period, you would
9 know about that response period.

10 If by rule we say we want the response back
11 to the office in two months, then you'll get two
12 months. And it will be made clear that failure to
13 respond could result in abandonment of your
14 international application.

15 I think that's about all I have to say.

16 MR. ALEXANDER: I think this is the portion
17 of the meeting that we open up any questions that any
18 members of the Trademark Public Advisory Committee have
19 with respect to the implementation of the Strategic
20 Plan.

1 Some of the issues, I think, are not as
2 pressing as we thought they might be since it is a
3 five-year plan and much of it is not going to be
4 initiated over the next year as I understand it. And
5 we've heard from some of the areas such as quality
6 control which has been initiated already.

7 Any questions by any members of the Advisory
8 Committee? Joe.

9 MR. NICHOLSON: I have just one question to
10 Bob.

11 Have you mentioned all the quality
12 initiatives that will not be implemented as a direct
13 result of there being no budget in the finalized
14 budget?

15 MR. ANDERSON: Yes. Second set of eyes
16 because it's related to expedited examination would not
17 be implemented until such time as that came up and then
18 only be done as a prototype. As I said before, we're
19 not sure of the specific value of second set of eyes.
20 And we want to take a look at it. It would be done as

1 a prototype. And if there were a high value or a
2 high-level return from doing it, then we would probably
3 implement it across a broader base of filings in the
4 Office or responses in the Office.

5 We're hopeful that the in-process review will
6 be sufficient to take care of most of our quality
7 issues. It is being designed to try to address
8 examination problems at the front end of the system as
9 opposed to doing reports on bad things that happened
10 after they've happened.

11 MR. ALEXANDER: Bob, what is the difference
12 between a second set of eyes and the quality control
13 process that we presently are implementing and why
14 cannot we use the present set of randomly selected as
15 opposed to selected from a specific category to serve
16 the same purpose?

17 MR. ANDERSON: The biggest difference is the
18 in-process review is done on a random sample basis. We
19 had a statistician give us the number of files that
20 would have to be looked at to give us pretty reliable

1 data regarding examination quality or examination
2 excellence.

3 Second set of eyes in the expedited
4 examination process, any time an examiner made a
5 substantive refusal under Section 2 of the Act, that
6 refusal would be reviewed by a second set of eyes
7 before it was mailed out of the office for sufficiency,
8 or should the refusal have been made, or is there
9 adequate evidence in the file?

10 In some sense, if in-process review addresses
11 most of the issues that have been raised us in the past
12 through customer surveys, second set of eyes might not
13 be necessary at all. If there is sufficient time
14 between having implemented in-process review, getting
15 the procedure to work, and instituting whatever
16 necessary changes might be required in the examination
17 process, there's always a possibility that the second
18 set of eyes might be a fast prototype; but it would
19 probably also be a prototype that wouldn't get adopted
20 by the Agency.

1 MR. ALEXANDER: Any other questions from
2 members of the T-PAC? Yes, David.

3 MR. STIMSON: A comment rather than a
4 question. I think we're talking here today about
5 implementation of the Strategic Plan. I appreciate
6 Bob's filling us in on the status of that. And we're
7 not discussing next year's Strategic Plan. And as I
8 understand it, in the draft that we received, the
9 February 4 draft of the next Strategic Plan, was
10 similar to last year's plan.

11 And in my e-mail to members of the T-PAC,
12 which I think has been shared with the Trademark Office
13 already, I raised a number of questions that I want
14 clarification on before I felt the T-PAC could endorse
15 the Strategic Plan. Since that's not in front of us
16 today and since I probably will not be part of the
17 discussion that the T-PAC has when they discuss the
18 Strategic Plan next year, I would just urge that the
19 questions I had in areas that I felt the T-PAC needed
20 clarification on be considered by the T-PAC when they

1 do discuss and consider endorsing the next version of
2 the Strategic Plan. But I'm not going to raise those
3 issues today since that's not really the topic for our
4 discussion.

5 MR. ALEXANDER: I think it's useful to make
6 reference to that material which has, in fact, been
7 shared with all T-PAC members and with the Trademark
8 Office. Not attach it to this meeting but just to make
9 reference to it so that it's incorporated conceptually.

10 And the same would be true for some of the
11 questions Howard has raised in his e-mails which have
12 been shared with the T-PAC and also shared with the
13 Office. Yes, Jon.

14 MR. SANDELIN: As my penance for having
15 missed the last meeting, I actually went through the
16 transcripts from both the August meeting and the
17 November meeting and made some rather extensive notes.

18 And then from those, I tried to pull out what were the
19 sort of major issues and the concerns that people have.

20 And if it's appropriate, I could kind of summarize

1 those and send them around so we keep an idea of what
2 things we have found to be priority issues for the
3 group.

4 MR. ALEXANDER: I think that would be an
5 excellent idea and very useful for the next meeting if
6 you could circulate it.

7 Griff.

8 MR. PRICE: I think we should express the
9 appreciation of the Trademark user community for the
10 efforts that the USPTO has undertaken over the past
11 year in connection with the Strategic Plan. It has
12 been a very complex process and a very involved one.
13 But I think the Office has made a special effort at
14 every stage of the process to reach out to user groups
15 and the interested parties for input.

16 In many ways, the current version of the
17 Strategic Plan responds to the comments and input that
18 the Office has received. There are a number of
19 unresolved issues. In particular, there's the
20 over-arching issue of diversion. Nevertheless, I think

1 what we have in front of us today represents a great
2 step forward from where we were last year when the June
3 3 initial draft of the Strategic Plan was released.

4 I would like to express my personal
5 admiration for the work that every representative of
6 the Trademark Office has put into this plan. And I
7 think it would be appropriate for the T-PAC to
8 recognize the work effort, sweat, blood, and perhaps
9 some tears that have gone into it. There may still be
10 a long way to go. But as we all know, the PTO, and in
11 particular the Trademark Office, have been recognized
12 as model agencies in many ways in the federal
13 government. And we've seen the reason why. Thank you.

14 MR. ALEXANDER: Griff, I think that's well
15 stated. And I probably feel free -- and as a matter of
16 fact, I do feel free to indicate I believe that's the
17 general opinion of everybody on the T-PAC in terms of
18 what has been a very difficult period of time in which
19 there have been some differences of opinion but never
20 any animus and always an appreciation for the fact that

1 everybody is playing their role in good faith and
2 fulfilling their role as they see appropriate.

3 And we have a great many very dedicated
4 public officials to whom we're grateful for the time
5 and effort that they've put into this. And there are
6 none of us who are in the private sector that lack
7 appreciation for that because that's what makes a good
8 government run no matter which party is in power.

9 I think we're coming to the close of this
10 session. So if anybody would like to express
11 themselves, please do so now.

12 MR. STIMSON: I have a question. Will this
13 group, the current members of the T-PAC, be meeting
14 before those of us rotate off in July?

15 MR. ALEXANDER: I have deliberately left open
16 that issue. The rotation occurs in July. And I
17 suspect when the terms expire -- and I do intend to try
18 to meet with Under Secretary Rogan between now and the
19 next couple of months to determine whether there's any
20 way in which we could expedite our replacements and

1 have sort of a cohesive group moving forward without a
2 two- or three-month lapse.

3 In some respects, the lapse serves a purpose
4 because, if you don't appoint the next three people
5 until November, then everybody's terms expires at the
6 appropriate time. But I hate to see that happen
7 because it means six peoples will have to serve and do
8 the annual report. And I know Siegrund is anxious to
9 draft it.

10 But I was going to wait until about probably
11 the end of March to make a decision as to whether we
12 ought to have a June or July meeting or even a May
13 meeting. And it depends on what happens with the
14 budget and whether there are things that are pending
15 that makes sense for nine of us to address it as
16 opposed to six people addressing thereafter.

17 I'm open to suggestions. If people want to
18 set a specific time for the next meeting now, I don't
19 want to mandate not having a meeting before June or
20 July. Gentlemen.

1 MS. KANE: I think it's very beneficial to
2 have the input of these people who are rotating off,
3 who have been with us for a period of time. I guess
4 from my own schedule, July would be a very bad time to
5 have a meeting. So I would hope to have one and have
6 it before July.

7 MR. ALEXANDER: Does May or June strike
8 people as the appropriate time? Yes, Kimbley.

9 MR. MULLER: We need to avoid the first week
10 in May because we'll all be (inaudible).

11 MR. ALEXANDER: Jon.

12 MR. SANDELIN: I'm not sure if this is
13 possible or if there is interest, but I would like to
14 propose that, even when these people who have so much
15 background and knowledge rotate off, that they could at
16 least -- I wouldn't put them on the spot -- but they
17 would consider remaining on sort of the e-mail
18 discussion group as we work through some of these
19 things maybe until towards of end of the year.

20 MR. ALEXANDER: When we rotate off, we are no

1 longer members of the T-PAC. And there are things that
2 we cannot be privy to that the T-PAC can be privy to in
3 closed meetings. And we'll, of course, confer with
4 counsel for the USPTO. I think all of us would be
5 available for advice and consultation on any given
6 problem.

7 You indicate June is a bad month for you,
8 Siegrund.

9 MS. KANE: No, July.

10 MR. ALEXANDER: July.

11 MS. KANE: July was bad. June would be
12 better, probably as good as May.

13 MR. ALEXANDER: I would like to shoot for
14 June then because that's the last time that we will
15 really see what the status of things are before we
16 rotate off.

17 Why don't I do what I've done for all of the
18 other meetings, send out a calendar, everybody will
19 indicate those days that they're unavailable. And then
20 I'll select a day where the maximum number of people

1 are available. It generally has worked out to have
2 everybody or everybody but one here. Is that agreeable
3 to everybody?

4 THE GROUP: Yes.

5 MR. MOYER: I think that would really be a
6 good idea to get the benefit of your views then and
7 then in the next year.

8 MR. ALEXANDER: Now, we do have a number of
9 people here other than members of the T-PAC. And we've
10 always invited any member of the public, if there is a
11 member of the public, that had anything to say, to pose
12 any questions they wanted. I'm not sure we have
13 anybody here other than members of the USPTO. But if
14 there is anybody else and they care to say anything,
15 now is the time before we adjourn.

16 Having heard no participation and there being
17 no further business to come before the T-PAC, I call
18 the meeting adjourned. Thank you very much, everyone.

19 [Meeting adjourned at 3:35 p.m.]

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I, Jane F. Hoffman, Stenotype Reporter, do
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